

# The Impartial LAWYER.

I. Setting forth such Special Adjudged Cases, as immediately concern such Persons as are exercis'd in the Laws of *England*; as Chief Officers, Counsellors, Justices, Sheriffs, Bayliffs, Attorneys, Clerks, and Solicitors.

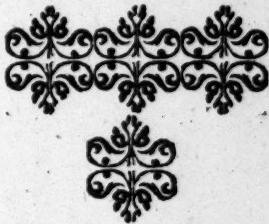
Wherein is Demonstrated, what Remedy the Lawyers and Lawful Officers may have, against such as would defame or defraud them in their lawful Practice.

As also, such Relief as others may have against them, for their unjust or irregular Proceedings.

With other Special Matters and Observations, properly digested for such a Treatise.

Adapted to all Capacities; and may be profitable, as well to Lawyers as Laymen.

II. With References to all Sort of Precedents and Pleadings, relating to the several Matters therein treated.



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In the *S A V O Y*:

Printed by *J. Nutt*, Assignee of *Edward Sayer Esq;*  
for *John Waltboe*, in the *Middle-Temple Cloysters*.  
M. DCC. IX.



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## TO THE READER.

THE Apology I shall make for this Treatise, is grounded upon that old common Adage, or rather Presumption, That the Professors and Officers of the Law have all the Law in their own Hands; and that therefore, in Respect to all their particular Misdemeanours, are as dangerous to be meddled withal, as a *Noli me tangere*, against which, there is hardly any Remedy: And upon this Account, the Law it self is also calumniated of great Partiality, and an over-fond Indulgence, to those who are thus especially devoted to her Service. And though it cannot be denied, but that all lawful Professors have their reasonable Privileges and just Allowances, as well in Respect to their own, as their Clients Cause; yet whoever shall take the Pain, to peruse this Treatise, may be readily satisfied of the Impartiality of the Law, with Regard to her own Professors; nay, it may be, they will conclude, she is to them rather a

## To the Reader.

Step-mother, and therein too too severe : Which Thing, if granted, will fully acquit the Law of this presum'd Indulgence, and thereby thoroughly convince all pretended Objectors to the contrary. The Title therefore, and Matter of this Treatise, pursuing the Purport of the Law, will not, I presume, be charged with Impertinence ; though, I confess, it may be said to be indifferent ; that is, both *Pro* and *Con*, betwixt the Lawyer and the Layman ; and with which, neither, I hope, can well be offended, unless too much ballanced by Impartiality. In brief, as to what herein respects private Persons, daily Experience shews it is very convenient, if not altogether necessary, and that for all Degrees of such Persons. To conclude, the Whole hath been carefully collected from the best approved Authorities, and those also of the latest Impression ; for which, there needs no further Apology or Recommendation.

Vale.



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# The Impartial LAWYER, &c.

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## C H A P. I.

### Of Judges, and other Chief Officers, &c.

**A** Man shall not have an Action No Action upon the Case against a Judge of for a false Record, for giving false Judgment. Judgment.  
9. H. 6. 60. 6. Fitz. *Act. sur le Cas,*

6. & Br. 9.

But an Action lies against a Judge of the But for refu-  
Stannary-Court, for refusing a Plea, which sing a Plea.  
by Law he ought to have accepted. 2. *Roll.*  
*Rep. 498.*

But not against a Judge of an Inferior Not for ta-  
Court, for taking in sufficient Bail. *Hur. 120.* king in suffi-  
cient Bail.

Nor against a Sheriff for quashing an Es-  
soin in his Court, with the Consent of the Not against a  
Suitors, though it was erroneously done ; for Sheriff, &c.  
the Party might have false Judgment for it, with Consent  
of the Suitor.  
22. *Aff. 45.* *Fitz. Bill. 12.* But if the Sheriff  
quash the Essoin erroneously, without the Con- *Alii* without  
tent of the Suitors, an Action lies against him the Consent  
for this, because no false Judgment lies. 26. *of the Su-*  
*tors.*

*Aff. 45. Fitz. Bill. 12. Br. 43. Br. Act. sur le Case, 79. Br. Faux Judgment 18.*

Against Bayliffs in ancient Demesn.

If the Bayliffs in ancient Demesn hold Plea after the Record is removed in Bank, by which the Tenant loses his Land thereby Recovery, he may have an Action upon the Case against them. 14. Ed. 3. 39. F.N.B. 93.

Against Steward of Court-Baron.

*Vide Leon. 99. Action against the Under-Steward of a Court-Baron, for proceeding after a Corpus cum Causa delivered.*

Not against Sheriff as a Judge.

If a Sheriff hath a Court by Prescription, and hath used to execute Process himself, no Action lies, because he does it as Judge. Mich. 8. *Jac. B. per Cur.*

It lies against an Escheator.

If an Escheator returns a false Office, contrary to what was found by the Jury, in Prejudice of the Party, an Action lies, for he is not a Judge but an Officer in this. 9. H. 6. 60. *Fitz. Act. sur le Case. 6. Br. 9. 2. Ven. 26. Palm. 143.*

*Vide concerning Sheriffs, Chap. 5.*

For Conspiracy by Mayor, Town-Clerk, and Jaylor.

If the Plaintiff declares, That he affirmed a Plaintiff of Debt in the Court of *B.* against *C.* and thereupon caused *C.* to be arrested; and that the Defendant (being the Mayor, Town-Clerk and Jaylor of *B.*) did conspire to delay the Plaintiff in the said Suit, and in Peril of his said Debt, had let *C.* go at large, without taking any Bail; yet an Action lies; for the not taking of Bail, is not the Cause of the Action, but the Conspiracy. Mich. 31. & 32. Eliz. & 1. Leon 189. adjudged.

Against a Mayor upon a Mandamus.

If upon a *Mandamus* to restore *J. S.* to his Place of a Burges of *P.* *vel Causam nobis signif.*, &c. the Mayor, &c. return a good Cause,



Cause, &c. the Matter of which is false, an Action lies for this false Return. *Trin. 13. Jac. & II. Co. 99. Bag's Case.*

So an Action lies against the Mayor and Commonalty of *L.* for making a false Certificate of a Custom. *Hob. 87.* Simile, for a false Certificate.

If upon a Plaintiff levied in the Court of *B.* before the Bayliffs of *B.* according to the Custom there, a Warrant is directed to the Under-Bayliffs to take *J. S. ita quod habeant Corpus ejus coram Ballivis ad prox' Cur'*, and the Under-Bayliffs take him, and commit him to the Prison, *sub Custodia* of the Jaylor of the Prison of *B.* if they have him not at the Day, an Action lies against them, and not against the Jaylor, for there was no Commitment to him by any lawful Authority; and that Custody the Jaylor had, was only as a Servant to the Under-Bayliffs. *Adjudged int. Baldry & Johnson, Trin. 41. Eliz. Vide Cro. Eliz. 743. Gen. Abridg. 184.*

If a Man brings an Action against *J. S.* before the Mayor, Bayliffs and Stewards, of a Town, where the Bayliffs are the Jaylors of the Prison of the Town, and *J. S.* for Want of Bail, is committed to the Bayliffs upon mean Process, and they suffer him to go at large before Judgment and Execution; and after the Plaintiff recovers against him; the Plaintiff may have a Special Action upon the Case against the Bayliffs for this Escape; for by this he is deprived of the speedy Means to have him in Execution after Judgment, the which he might have had, if he had not been suffered to go at large. *Hill. 4. Jac. B. R. the Bayliffs of Newcastle's Case.* Against the Bayliffs of a Town, being Jaylors, for an Escape.

Attachment  
against a  
Mayor, &c.

An Attachment was granted out of B. R. against the Mayor of N. for issuing out Execution against a Judgment given there, after a Writ of Error brought and allowed there. *Stil. Rep. 321.*

*Vide Chap. 8.*

For Words a-  
gainst a Judge  
of the Admi-  
ralty.

If one say of a Judge of the Admiralty-Court, That a Sentence there given was corruptly given, an Action will lie for these Words ; and the Corruption shall not be intended in the Witnesses, but in the Judge that gave the Sentence. *Adjudged, Mich. 35. & 36. Eliz. int. Dr. Cæsar & Corsey. Vide Cro. Eliz.*

305.

Corrupt  
Judge.

Against a  
Sumner of  
Ecclesiastical  
Court, for a  
false Return.

So to say, He is a corrupt Judge, is actionable. *4. Co. 16. 2. 1. Mod. 23.*

If a Sumner of the Ecclesiastical Court, upon a Premonition directed to him by the Ecclesiastical Court, to warn J. S. to pay certain Costs, awarded against him by the Court, returns to the Court, That he hath warn'd the said J. S. by which the said J. S. is excommunicated, whereas, in Truth, he never warn'd him, J. S. may have an Action upon the Case against him for that false Return, though he be an Ecclesiastical Officer ; for the Excommunication is a great Damage to him, as well Temporal as Spiritual, for during that he cannot have any Action, and and is liable to an *Excommunicato capiendo*. *Adjudged, Mich. 12. Jac. B. R. int. Powle & Godfrey. Vide 2. Bul. 266. Moor 835. Pl. 1126. 1. Rol. Rep. 63, 64. 12. Co. 127.*

Against a  
Sumner, for  
a malicious  
Citation.

So if a Sumner of the Ecclesiastical Court falsely and maliciously, *colore Officii sui* of a Sumner,

Sumner, to the Intent to scandalize *J. S.* with the Fame of Incontinency with *A.* and to put him to Expences in the Ecclesiastical Court, cites *J. S.* to appear for Incontinency with *A.* upon which *J. S.* appears, and is there charged by the Judge with it; and upon his Answer discharged, by which he is put to Expence; *J. S.* may have an Action upon the Case against the Sumner upon such a Declaration, for citing him falsely and maliciously, & *Colore Officii*; and it shall be intended, that he did it without Process. *Adjudged, Hil. 8. Car. B. R. int. Carlian & Mill. Cro. Car. 291.*

*I. Jones, 312.*

See a like Point in an Action against *simile, against Church-wardens for such a Presentment. Church-War- Cro. Car. 285. I. Jon. 305. I. Rol. Abr. 112. drens.*  
*Pl. 9. 2. Mod. 52. I. Vent. 86, 87. I. Lev. 292. & I. Syd. 463.*

If a *Fieri facias de Bonis Ecclesiasticis* of *J. S.* Against a Bi-  
shop, for a  
be directed to the Bishop of *E.* and he returns, *quod nulla habet Bona Ecclesiastica*, which is  
false; an Action upon the Case lies against the  
Bishop for this false Return. *Hil. 17. & 18. Car. 2. int. Pitcbard & Payton. Vide I. Syd. 276. & I. Keb. 947. 2. Keb. 83.*

*I. Syd. 34, 35.* Whether an Action lies a- Against a  
gainst a Parson, for refusing to give *J. S.* the Parson.  
*Sacrament dubitat*, but, *I. Keb. 947.* that it  
lies agreed *per Cur'* because a Man is bound to  
receive, upon a Penalty.

Against a Bishop, for not taking Caution Against a Bi-  
shop, of a Party excommunicated. *Raym. 226. 2. Inst. 623.*

Against an Ordinary, for refusing to grant Against an  
Administration. *Cart. 126.*

If the Register of a Bishop refuseth to register a Licence of a Chappel for a Conventicle, according to *1 W. & M.* and upon a *Mandamus* to do it, makes a false Return, all the Inhabitants may join in one Action against him.

*3. Lev. 363.*

Against a Parson, for a wrongfull Excommunication.

If *A.* be excommunicated, and the Letters of Excommunication are brought to the Parson of the Parish, to be read and published in the Church against *A.* and the Parson having Malice to *B.* puts out the Name of *A.* and puts in the Name of *B.* and then pronounces *B.* excommunicated ; *B.* may have an Action upon the Case against the Parson ; for this is not only an injurious Vexation, but a Scandal also to *B.* *Adjudged per Cur. Trin. 43. Eliz. B. R. Harris's Case. Vide 1. Rel. Abr. 37. Pl. 15.*

Exhibiting a Petition against a Vicar-General.

If *A.* exhibits a Petition to a Committee of Parliament appointed for the Examination of Publick Grievances, and therein charges *D.* being a Doctor of Law, and Vicar-General to the Bishop of *L.* with several great Offences and Extortion, &c. in his Office ; and for the better Manifestation of these Grievances, causes the said Petition to be printed, and to be delivered to several of the Members of the said Committee ; yet no Action upon the Case lies ; for this Printing and Delivering of the Case, as aforesaid, is according to the Order and Course of Proceeding in Parliament. *Adjudged, Hill. 19. & 20. Car. 2, int. Lake & King. 1 Sand. 131. 1. Lev. 240.*

Nor upon a Libel in the Spiritual Court, for charging the Witness with Perjury.

If *S.* libels against *J. D.* in the Spiritual Court, for a Defamation, and produces *W. N.* as a Witness to prove the Defendant guilty, and the Defendant makes an Allegation in Writing, (as the Course there is) That

That the said *W. N.* ought not to be received as a Witness, because he is a perjured Man, and that he was perjured in such a Cause at such an Assizes is certain, which Allegation is false; yet *W. N.* shall have no Action upon the Case for this against *F. D.* because the Spiritual Court had a Jurisdiction of the first Matter; and this Allegation is according to the Course of Justice there, where the Sentence is given upon the Proofs; and therefore if the Action would lie, every Man would be deterred from taking lawful Exceptions to *The Reason thereof.*  
*false Witnesses.* *Adjudged upon Demurrer, 15 Jac. B. R. int. Westover & Daubinet, Cro. Jac.*

432.

If *A.* sues *B.* in the Spiritual Court for Tithes, contrary to a Prohibition by him made, an Action upon the Case lies for it; for this Suit is *coram non Judice.* *Int. Bray & Partridge. Hob. Rep. 257. Vide Cro. Eliz. 836.* Same Case, and like Point, adjudged *con' i Rol. Abr. 101. Pl. 2.*

A Man sues in the Spiritual Court for Tithes in Kind, whereas he ought to sue for a *Modus, &c.* *Q. 1. Rol. Rep. 64. 3. Keb. 383.*

So if *A.* sues *B.* in the Spiritual Court for Tithe of Trees not titheable, an Action upon the Case lies. *4 Jac. int. Dom. Waterhouse & Moodie.*

A false Oath in a legal Course not punishable in the Ecclesiastical Court. *Vide 1. Rol. Rep. 61. 2. Bul. 269. Gouf. 51. Pl. 13, 14.*

*ff. Action for undue Prosecution in the Court of Admiralty. Rast, Ent. 23, 24. Dyer 159.*

*ff. Simile, in Cur' Christian' after a Prohibition delivered, and cast into the Dirt. F. N. B. 92.*

B 4

*ff. For**Simile, in Cur' Christian'.*

For arresting *ff.* For arresting the Plaintiff in a City-Court, without Cause of Action. *Aft. 4.*

in a City-Court. *ff.* For executing a Writ, after a Writ of Error allowed. *Hern 233.*

Prosecution after Writ of Error.

*Vide amongst the Precedents, Chap. 18. &c.*

Upon false Articles to a Master in Chancery, actionable.

If *A.* exhibits false Articles to a Master in Chancery against *B.* upon which *B.* is bound to his good Behaviour, *B.* shall have an Action upon the Case against *A.* for this Deceit and Vexation. *Adjudged int. Allen and his Wife Plaintiffs, and Gomersal Defendant, Pas. 17. Jac. B.* *Adjudged per tot. Cur. Mich. 11. Jac. B. int. Bradly & Jones. Godb. 240. Con.* But because the Articles were exhibited in Chancery, and he thereupon had Proceeds out of the King's Bench, Judgment was there given for the Plaintiff. *Vide Rob. Ent. 75, 76.*

Simile, to a Justice of Peace, not.

If a Man exhibits false Articles to a Justice of Peace, no Action lies. *4. Co. 146. Cutler & Dickson. 3. Leon. 123. 4. Leon. 35. Cro. Eliz. 230. Godb. 240. Vide Rob. Ent. 73, 74.*

Not upon reading an Affidavit against the Defendant, who said it was all false, &c.

The Plaintiff, *A.* as Evidence against *B.* made an Affidavit, in order to have *B.* bound to his good Behaviour; and upon the Reading thereof before the Justices and Officers of the Court, *B.* said, There is not one Word true in that Affidavit, and I will prove it by 40 Witnesses: Held not actionable; for the Defendant, by his Answer, made a Defence of himself in the Court, against the Charge and Justification; and therefore justifiable, being in a judicious Way. *Adjudged int. Moulton & Clapham, Pas. 15. Car. I. Rot. Abr. 87. Pl. 4.*

One said of a Minister, That he preached Minister.  
Lies in the Pulpit, and held actionable. *Stiles*  
*363. 1. Rol. Abr. 58. T. Pl. 2. Hill 1652. int.*  
*Drake & Drake.*

Another said of a Minister, Thou hast made Minister.  
a seditious Sermon, and mov'd the People to  
Sedition this Day: Held actionable. *4. Co.*  
*19. 2. Vide Stiles 49.*

But where the Matter charged is examina- Minister;  
ble in the Spiritual Court only, not actiona-  
ble, as to charge a Minister with Adultery,  
*&c. Noy 64. Cro. Eliz. 94, 502.*

One said of a Church-warden, Thou art Church-war-  
a cheating Knave, and hast cheated the Parish den.  
of 40 l. Held actionable. *Stiles 338, 394.*  
*Vide 1. Jones 308. & Cro. Jac. 339. 2. Bull.*  
*228.*

The Court of B. R. granted an Attach. Commissio-  
ment against Commissioners of Sewers, for ners of Sew-  
ers.  
proceeding after a *Certiorari* directed. *Raym.*  
*186.*

## C H A P. II.

## Counsellors, &amp;c.

Counsellor  
retain'd, neg-  
lects to at-  
tend my  
Cause.

**I**F I retain a Man of the Law to be my Council at Guildhall in London such a Day, at which Day he does not come, by which my Cause miscarries, I may have a Writ of Deceit against him. 20. H. 6. 34. b.  
1. Rol. Abr. 10. Pl. 6. 91. Pl. 11.

Counsellor  
retain'd to  
obtain a Ma-  
nor, discovers  
his Council  
to another,  
whereby, &c.

So if a Man of the Law, for a certain Sum, promises to be of the Council of another, and to obtain such a Manor for him; if he voluntarily breaks his Promise, by discovering his Council to another, by which the first gets not the Manor, an Action on the Case for a Deceit lies against him. 11. H. 6. 18, 24, 25. Br. Action. *sur le Case* 108. Fitz. Act. *sur le Case* 7.

Express Pre-  
mise upon a  
Retainer to  
obtain, &c.

And some hold the Law would be the same, though he had done his Endeavour to obtain it; for that he had expressly bound himself to obtain it. *Sed vide* 11. H. 6. 18, 56. & 1. Rol. Abr. 96. Pl. 7, 105. Pl. 3.

Warranty to  
obtain a Ma-  
nor.

But it seems, that if one retains a Counsellor to get a certain Manor, and the Counsellor warrants him to gain the Manor; yet no Action lies, if he does not obtain it; for this rests meerly in Covenant, and therefore the Warranty ought to have been by Deed. 11. H. 6. 18. 1. Rol. Abr. 9. Pl. 1, 2. 91. Pl. 9. Br. Act. *sur le Case* 108. And it is said, this seems to be intended without Consideration. *Vide* 1. Rol. Abr. Fo. 96. & Gen. Abr. 186.

Again, if a Man be retain'd of my Council to buy the Manor of D. from J. S. and he falsely purchases the Manor to himself, an Action upon the Case lies against him. 16.

H. 6. 44.

If one be retain'd to purchase Land for me, and he purchaseth it for himself, Action lies; but if he does his Endeavour, and cannot, 'tis otherwise. 3. H. 4. 14. 11. H. 6. 18. 20.

H. 6. 27. If he be to buy it of J. S. and J. S. die, he is discharged of it, and may afterwards buy it for himself. *Vid. Bro. 177.* 10. H. 6. 4.

3. H. 7. 14, 17. Buying a Lease, or taking an Obligation in his own Name, and not for me.

If one assumes to purchase Lands at the best Price he can, the Promise to purchase is absolute; but the Price must be as reasonable as he can. 1. *Lev. 3. per Twisden*: But by *Foster*, Chief Justice, he is not bound to purchase, unless the Owner will sell. Here the Plaintiff said, That he had not purchased it; and good, without averring that he might have bought it.

So if a Man, for a certain Sum, undertakes to sollicit J. for me, for a Lease for Years, of certain Lands, and he sollicits J. for a Lease for himself, an Action upon the Case lies against him for this Deceit. 3. H. 7.

14.

If a Man shews his Evidence to a Man of Counsellor the Law, though he after becomes of Council to another, and discovers the Council of the said Evidences, yet no Action lies, because he was not retain'd with him. 11. H. 6. 18.

In an Action between Two, where the Question is upon Evidence to a Jury, If one of the

Says, the adverse Party is a Bankrupt.

the Parties be a Bankrupt or not ; if a Counsellor, in giving Evidence for his Client, says expressly to a Juror, That he is a Bankrupt, where it is false ; yet no Action lies against him, because it is in the Course of Justice. *Trin. 15. Fac. B. R. Cro. Fac. 432.*

*By a Counsellor, &c. for Words spoken.*

Action by an  
utter Barrister,  
for  
Words, Thou  
art no Law-  
yer, &c.

*Simile, by an  
utter Barris-  
ter.*

For Words,  
He is a  
Dunce, &c.

Of a Lawyer,  
He is an ig-  
norant Man,  
&c.

A Man said to an utter Barrister, Thou art no Lawyer ; Thou canst not make a Lease ; Thou hast that Degree without Desert ; They are Fools that come to thee for Law ; and the Words held actionable. *Int. Banks & Allen, Mich. 13. Fac. B.*

The Plaintiff declared, That he was an utter Barrister of the Middle Temple, and had been a Practiser of the Law for many Years ; and the Defendant purposing to defame him, maliciously said of him to J. S. his Father-in-Law, Did Mr. P. the Plaintiff marry your Daughter ; to which J. S. said, Yes ; to which the Defendant replied, He is a Dunce, and will get nothing by the Law ; to which J. S. answered, Other Men have a better Opinion of him ; to which the Defendant replied, He was never accounted otherwise in the House ; and the Action was held to lie upon this Declaration, for disgracing him in his Profession. *Adjudged int. Pears & Jones, Mich. 10. Car. B. R. Cro. Car. 362.*

A Corporation being assembled to elect a Steward, and J. S. a Lawyer being proposed, one of the Members said to his Brethren, He is an ignorant Man, and not fit for the Place ; *per quod* he was refused ; and thereupon J. S. brought his Action for these Words, and

and the Court inclined for him. *March. 146.*  
But no Judgment.

A Man said of a Counsellor of Law in the North, Thou art a Daffa-down-dilly ; and held actionable, with an Averment, That the Words signify, that he is an *Ambodexter*. *Pear's Case, Mich. 10. Car. B. R.* So if he calls them *Ambodexter*. *Dal. 97. Moor 409. Godb. 214.*

A Man said to a Counsellor, Thou a Barrister ! thou a Barretor ; Thou call'd to the Bar ! thou wert put from the Bar ; and ad- judged actionable, though the Words are not certain, nor is it said that he is a Common Barretor in his Profession. *Int. Bestley & Dison, Pas. 8. Fac. Adjudged in Camera Scat.*

*Vide Noy. 98.*

One said, You a Counsellor ! a Fool, an Ass, an Hangman ; A Counsellor of Law ! a Fool in the Profession ; and held actionable. *Popb. 207. adjudged.*

A Man said to an utter Barrister, who was Town-Clerk, and Steward of the Town-Court, Thou art a Precisian Knave, a Puritan Knave, a Baggage Knave, a Dissembling Knave, a Corrupt Knave, and I will prove it, &c. and thou hast not carried thy self as thou oughtest ; and I will make thee know thou hast wrong'd me in the Court of P. and thou hast not perform'd thy Office according to Law : These Words were adjudged actionable ; for it appears by the last Words, That he was corrupt in regard of his Misdemeanour in his Court and Office. *Int. Fowell & Cowe, Pas.*

16. *Fac. B. R. Popb. 139.* There the Judgment is said to be given upon the Words Cor- rupted Knave only ; which, upon the whole, must

Of a Coun-  
sellor, Thou  
a Barrister !  
Thou a Barre-  
tor, &c.

Of an utter  
Barrister,  
Thou art a  
Precisian  
Knaves, &c.

Corrupted  
Knaves, and  
Judgment  
thereon.

must be intended in his Office : And as for the Word Bribing, it is said it did not import a Taking of any Bribe. 2. *Rol. Rep.* 23.

Of a Town-Clerk, Thou hast made false Certificates, &c.

Of an Arbitrator, he has after A. says C. has taken such Bribes from B. taken Bribes, that he is fallen from hearing any Thing on &c.

Of a Steward of a Court, he hath put a Presentment, &c.

Of a Counsellor, he will deceive you, &c.

He hath dealt falsely, &c.

Thou didst disclose my Council, &c.

To say, Thou hast made many false Certificates to the Mayor and Burgeesses in the Court ; and the more thou stirrest in it, the more it will stink, being spoke of a Town-Clerk. *Hut.* 123.

If A. and B. refer a Controversy to C. and C. says C. has taken such Bribes from B. that he is fallen from hearing any Thing on his Side. This is a Slander punishable. *Velv.* 62.

If a Man says of a Steward of a Court Baron and Leet, He hath put a Presentment into the Jury's Verdict against me, of 3 s. 4 d. for suing of P. W. out of the Court, contrary to a Pain, without the Consent of the Jury : These Words are actionable ; for this Deceit scandalizes him in his Profession. *Int. Carr & Read, Mich. 4. Fac. B. R.* 1. *Rol. Abr.* 65. *Pl.* 7.

One said of a Counsellor at Law, Go you to him to be of your Council ! he will deceive you : He was of Council with me, and revealed the Secrets of my Cause. These Words are actionable ; for it appears by all the Words, That he intends a Slander by the divulging of what he ought not. *Int. Snag & Gray, adjudged Trin. 13. Eliz. B. R.*

So to say, He hath dealt falsely with me, being his Client, and hath joined with mine Adversary : Held actionable. *Stiles 231.*

So, Thou didst disclose my Council ; held actionable. *Cro. Eliz. 358.* But to say, He hath delivered Copies of my Evidence to my Adversary : Not held actionable ; for it might be to some good End. *Moor 409.*

See

See a Diversity, where the Words are, He hath revealed the Secrets of my Cause ; and where thus, Go not to him, for he hath revealed, &c. *Hetl.* 174. *Vide Dal.* 97. He did discover all my Council to my Adversary. *Et vide Co. Ent.* 22. N. 19. Same Case with the Reason of the Judgment.

The Plaintiff declared, he was an utter Barrister and Practiser of the Law, and Steward of the Courts of J. S. and that the Defendant said of him to the said J. S. I wonder you will have such a poultry Lawyer for your Steward, for he hath as much Law as a Jackanapes: By Reason of which Words he was displaced from his Office, and the Words held actionable, for he is slander'd in his Profession, and thereby lost his Stewardship. *Mich. 36 & 37 Eliz. Palmer's Case. Owen 17. adjudged.* And the rather, because a Jackanapes is an unreasonable Creature.

And 'tis there said, if the Words had been, That he had no more Law than J. N. though J. N. was no Lawyer, yet no Action would have lain. *Vide Gouf. 126. & Cro. Eliz. 342. Moor 409. Godb. 441. Sed vide Winch. 40. & March 60. & Hetl. 172.*

One said, He hath no more Law than Mr. C—'s Bull; and held actionable. *1. Syd. 327.*

He hath no more Law than the Man in the Moon: Made a *Quære.* *1. Syd. 327.*

The Plaintiff declared, That he was a Practiser of the Law, and had several Persons of Honour for his Clients, and in particular the Countess of, &c. and that the Defendant wrote a Letter to the said Countess, wherein he said of the Plaintiff, he would give vexatious

He hath revealed the Secrets of my Cause, &c.,

Barrister being Steward of a Court.

Jackanapes, &c.

more Law than J. N.

more Law than Mr. C--'s Bull.

Than the Man in the Moon.

For writing a Letter to a Lady, being Client to a Counsellor.

That he would milk her Purse.

tious and ill Council, and stir up a Suit; and that he would milk her Purse, and fill his own Pockets; *per quod* he lost the said Countess, and other Clients: The Words were adjudged actionable; for they scandalize him in his Profession; and here is Special Damage also. *Adjudged, Mich. 23. Car. 2. int. King & Lake. Vide Gen. Abr. 119.*

*Narr.* That he was learned, and retained by Noblemen, &c.

That he was *Homo Conciliarius*:

And not *quod fuit eruditus in Lege*.

That he was Barrister, &c. But did not shew he was a Practiser.

The Plaintiff declares, *quod fuit eruditus in Lege, & ut Vir erudit' &c. per diversos annos jam retroact' &c. Nobilibus, &c. pro Consilio suo in Lege retent'*. *Vide Co. Ent. 21. n. 18. 22. n. 19.*

If the Plaintiff declares, That he is *eruditus in Lege*, and that the Defendant said of him, He is an Ass, a Fool in the Profession: This is no good Declaration; for it ought to have been, That he is *Homo Conciliarius*. *Trin. 2. Car. Popb. 207. per Jones Justice. 2. Bulst. 230.*

The Plaintiff declared, That whereas he was a Barrister, &c. but did not shew he was a Practiser, and therefore Judgment stay'd after a Verdict for the Plaintiff. *Stiles 231.*

## P R E C E D E N T S.

Against a Counsellor, for revealing of Council.

Against a Counsellor retain'd, to procure an Estate for the Plaintiff, &c.

*ff.* An Action against a Counsellor, who revealed the Plaintiff's Councils, by which he was troubled in the Possession of his Land. *Rast. Ent. 2. Vet. Intr. 22.*

*ff.* Against a Counsellor, who being retain'd, procured the Estate to be made to the Plaintiff's Use; and afterwards retain'd by another, procured a Formedon to be brought against the Plaintiff, and pleaded against the Plaintiff upon the Trial; and the Writ was after-

afterwards discontinued. *Rast. Ent. 2. Vetus.*

*Intr. 51.*

*ff.* Against a Counsellor, who was retain'd by the Plaintiff, assumed to be of his Council to buy Lands, or to obtain a Term, and after revealed his Councils to *W.* and became of Council with him, and purchased the Lands for him for a Term of Years. *11 H. 6. 25.*

In an Action upon the Case for Words, it Justification, is a good Justification, (though the Words were false) That he was Counsellor at Law retain'd in an Issue between the Plaintiff and *J. S.* and he said these Words upon the Evidence for his Client, if they were directly material to the Point in Issue. *Mich. 3 Jac. B. R. good.*  
*int. Brooke & Mountague.*

Also adjudged in the same Case, That the Matter shall be a good Justification, though the Words were not precisely pertinent to the Issue, but by a Consequence, and for a Mitigation of Damages. *Hob. 328. Cro. Jac. 90, 91.*

As in false Imprisonment, if the Defendant pleads in Bar, That he was Mayor of London, and imprisoned the Plaintiff till he found Sureties for his good Behaviour, being a Man of ill Fame and Manners; to which the Plaintiff replied, *de injur' sua prop' absq; tali Causa:* And a Counsellor of Law being retained for the Defendant, upon the Information of his Client, said upon the Evidence, That the Plaintiff was of an ill Behaviour, and that he had committed Felony: And in an Action upon the Case by the Plaintiff against him for these Words, it's said, He may well justify the Speaking of them for the Matter aforesaid, though they are false, and though they

tend not precisely in Proof of the Issue; for they tend to excuse a Magistrate in the Course of Justice, and are Material to mitigate Damages, and were spoke without Malice. *Int. Brook & Mountague, ut supra, adjudged upon a Demurrer. Vide Stiles 462.* And that the Words shall be intended to be spoken according to his Client's Instructions. *Vide Cro. Jac. 90. &c. 432.*

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**C H A P.**

## C H A P. III.

*Justices of Peace.*

**T**O say of a Justice of Peace, You are for Words of no good Subject to the King; was held a Justice, &c. actionable. *Cro. Eliz.* 191. *Cro. Jac.* 202. But You are no it seems he was also a Captain of the Guards, good Subject. and that the Reason of that Judgment was, because the Plaintiff was so near in Service about the Queen. *Vide i. Leon.* 335 & *i. Rot.* *Abr.* 43. *Pl. 6.* 75. *Pl. 1.*

But yet in the Case of *Duval and Price*, That he was *Case in Parl.* 12. Where an Action was disaffected to brought by a Justice of Peace, for saying, He the Govern- was disaffected to the Government, *per quod* ment. he was turn'd out of Commission, though it was adjudged for the Plaintiff in the Court of *Exchequer*, and after in the *Exchequer Chamber* that Judgment affirm'd in a Writ of Error, yet it was after reversed in the House of Lords. *Vide Gen. Abridg.* *Fol. 92. Pl. 6. in Mar-*  
*gine.*

One said of a Justice of Peace, You do where the openly maintain and countenance the worst Words are People, against God's Laws and the Queen's, too general, and held not actionable, because too general. *Int' Butler & Painter*, *Cro. Eliz.* 297. But *i. Palm.* 69. *Con.* and in *Yelv.* 21. cited to be adjudged against the Plaintiff, because not laid expressly, that he was a Justice of Peace at the Time of the speaking the Words.

One said of a Justice, and Surveyor of the *Sm'* concern-  
Manor of *L. &c.* He hath but one Manor, ing Words of  
and Perjury,

and that he hath gotten by Swearing and Forswearing, and held not actionable, because the Words are too general. *Adjudged int. Stanhope & Blith. 4. Co. 11. & Co. Ent. 21. N. 18.*

For a Justice  
of Peace, for  
Words spo-  
ken by Hear-  
say.

Concerning Words spoken of a Justice of Peace, &c. by way of Hearsay, That a Popish Priest had given him the Eucharist and Extream Unction; held actionable, the Words being taken together, and so adjudged. *Int. Knightly & Marrow. Trin. 34. Car. 2. 3. Lev. 68.*

Of a Deputy-  
Lieutenant.

*Vide 3. Lev. 30, 31.* concerning Words spoken of a Deputy-Lieutenant, and one of the Privy-Council of Ireland, That he was a Papist; held actionable. *Inter Row & Sir Thos. Clergis. Raym. 482. 3. Mod. 27, 28. affirm'd in Error.*

Of a Justice,  
He is a Rogue  
and a Papist  
Dog, &c.

*Vide 2. Vent. 265. & 3. Lev. 50.* adjudged where the Words were spoke of a Justice of Peace, He is a Rogue, and a Papist Dog, and a pitiful Fellow, and never a Rogue in Town has a Bonfire before his Door but he; *3. Mod. 103, 263.* and said, The Time perhaps might influence the Opinion of the Court, the Words being spoke the Day King James came to the Crown.

Debauch'd,  
and not fit to  
be a Justice.

*J. S. was a debauch'd Man, and was not fit to be a Justice of Peace, not actionable,* being Words in the Preter Tense, and of Time past. *Par. 1650. Adjudged, Int. Hamond & Kingsmill. Stiles 22. 210. 1. Lev. 52.*

Of a Justice,  
He is a Cor-  
rupt Man, and  
hath taken  
Bribes, &c.

Where one said of a Justice of Peace, put into a Commission to examine Witnesses: Sir G. M. is a Corrupt Man, and hath taken Bribes of *B. innuendo*, Bribes for Favour to be done to *B.* in the execution of this Commission, &c. The Words were held actionable, for

for corrupt Dealing in the Commission, and in the Examination of Witnesses, as in taking of Bribes, is punishable. *Pas. 3. Fac. B. R. int' Sir George Moor & Foster. Cro. Fac. 65. Telv. 62.*

*See after, about a Commissioner.*

Words spoken of a Justice of Peace, which Where not does not touch him in the Male-administration actionable of his Office, nor in his Oath nor Allegiance, are not held actionable. *1. Rol. Abr. 38.*

*Pl. 24. Cro. Fac. 484. 2. Rol. Rep. 43.*

A Man said of a Justice of Peace, and Of a Justice Judge of the Court of *Marches of Wales*, He and Judge, is a Blood-sucker, and seeks after Blood; if He is a Blood- a Man will give him a couple of Capons, or sucker, &c. half a Score of Weathers, he will take them; yet not held actionable, for the Words can Not action- have no ill Sense. *Mich. 37, 38. Eliz. B. R. able.*

*int' Hilliard & Constable. Moor 418. Pl. 574.*

*Cro. Eliz. 306. 433.*

So where a Man said of a Justice of Peace, So for, Thou Thou art a Blood-sucker, and not worthy to art a Blood- live in a Commonwealth, the Child not born sucker, &c. will curse Thee; held not actionable. *Int' Pinckback & Warwick. Mich. 37, 38. Eliz.*

*B. R. vide Noy. 64. 2. Mod. 163.*

A Man said of a Justice of Peace, He hath He hath taken Money of a Thief that was brought ken Money before him for stealing of Sheep, to deliver of a Thief, him, and keep him from the Gaol; held &c. actionable. *Trin. 38. Eliz. B. R. Cotton's Case.*

*Moor 695. Pl. 965.*

One said, You are a sweet Justice! You You are a sent your Warrant for *J. S.* to be brought before you for Suspition of Felony, and after *J. D.* unto him to give him Warning,

*C 3 that*

that he might absent himself ; held actionable.  
*Int' Burton & Tokin. Cro. Jac. 143. per tot. Cur. Hetl. 173.*

He desired  
me not to  
prosecute his  
Servants for  
stealing  
Sheep.

He is a Cor-  
rupt Man, a  
Vermin, &c.

Smothering  
of Felony.

Of a Justice  
of the Quar-  
ter-Sessions,  
By your  
Means I had  
Wrong, &c.

Of a Com-  
missioner, by  
a Commission  
out of Chan-  
cery, He hath put out Depositions,

One said of a Justice of Peace, He Five  
or Six Years since had Two Servants prose-  
cuted for stealing of Sheep, and he desired  
me not to prosecute them ; held actionable.  
*Latch. 49.*

If a Man says of a Justice of Peace, He is  
a Corrupt Man, he is a Vermin in the Com-  
monwealth, &c. an Action upon the Case,  
'tis said, will lie for such Words. *Mich. 42,*  
*43. Eliz. Sed dubitatur. Vide And. 119.* Held  
amongst other Words. *Vide Moor 141. Pl. 283.*  
& *Cro. Eliz. 192.*

One said of a Justice of Peace, My Bro-  
ther hath stol'en a Black Mare, and you are  
privy to it, and sent her away to the Fens,  
to my Brother's House ; held actionable, for  
though Privity only will not make him Ac-  
cessary, yet here he is charged with smo-  
thering of Felony. *Ergo, &c. Adjudged int.*  
*Lassels & Lassels. Moor 401. Pl. 528. Goulf. 132.*  
*Vide 1. Rol. Abr. 67. Pl. 26.*

One said of a Justice of the Quarter Ses-  
sions, By your Means I had Wrong at the  
Sessions, and there you caused J. S. to swear  
that which was untrue against me ; held  
actionable, because a Justice ought not to pro-  
cure any Man to make a false Oath, and so it  
is against his Office. *Adjudged int. Chetwin*  
*& Mason, Mich. 10. Jac. B. Vide Cro. Jac. 308.*  
*Telv. 220.*

If a Man says of a Commissioner, upon a  
Commission return'd by him into Chancery,  
He hath put out some Depositions that were  
taken,

taken, and added others that were not ; these Words are actionable, for this discredits him in his Reputation, so as not to be a Commissioner again, &c. *Int' Parker & Large, Hill. 17. Jac. B. R. per Cur.*

So to say, He hath return'd Depositions of Witnesseſ that were never ſworn, being ſpo- Depositions of Witneſſeſ never ſworn.ken of a Commissioner, held actionable. *Int' Fish & Thorowgood, Cro. Eliz. 623. Palm. 67.*

A Man ſaid of a Justice of Peace, I have Of a Justice, often been with him for Justice, but could I could never never have Justice at his Hands, but always have Justice, Injustice : These Words are actionable. *Ad- &c. judged int. Ifam & York. Mich. 3. Car.*

One ſaid, You have perverted Justice, and You have per- to your Shame and Dishonour I will prove vertyed Ju- it ; held actionable. *Cro. Eliz. 358. fice, &c.*

Another ſaid, You out of Malice and You out of Spleen have perverted Justice, and have Malice, &c. wrested the Law many times to ſerve your have perver- own Turn; held actionable. *Int. Hastings & Bea- ted Justice, mont. 1. Bul. 36. Cro. Jac. 240. Cro. Car. 14. &c.*

One ſaid of a Justice, He did of his own He did of his Head put into J. S. his Examination, That own Head put into J. S. he had confefſ'd that he had ſtoleſ a Lamb, his Examina- and held actionable ; for these Words imply, tion, That, that he put it in his Examination without the &c. Confeſſion of J. S. for if he put it in of his own Head, this could not be upon the Parties Confeſſion ; for this is as much as to ſay, He devised it of himſelf. *Adjudged int' Hamond & Kingsmill, Pas. 1650. Vide Stiles 22, 210.*

To ſay of a Justice of Peace, Thou deal- Thou dealeſt est Corruptly ; or, Thou doſt not admini- Corruptly, ſter Justice ; held actionable. *Cro. Eliz. 358. &c. Poph. 35.*

He did seek  
my Life, and  
offered 10*s.*  
*&c.*

If one says of a Justice of Peace, He did seek my Life, and offer'd 10*s.* to the Under-Sheriff to impanel a Special Jury, that might make me guilty of Felony: An Action will lie. *Adjudged int. Bleverbasset & Baspool, Hill.*  
*36. Eliz. Vide Cro. Eliz. 313.*

He hideth  
and covereth  
Felonies, *&c.*

One said of a Justice of Peace, He hideth and covereth Felonies, and is not worthy to be a Justice of Peace; and held actionable, because, if true, 'tis good Cause to put him out of Commission. *Adjudged int. Stucley & Bulbead, Mich. 44, 45. Eliz. Vide 4. Co. 19.*

He is a Smo-  
therer of Fe-  
lonies, *&c.*

And to say, He is a Smotherer and Maintainer of Felonies; held actionable, though spoke of a private Person. *Cro. Fac. 268.*

He is a Bas-  
ket Justice,  
a Partial  
Justice, *&c.*

One said of a Justice of Peace, He is a Basket Justice, a Partial Justice, I will give him 5*l.* every Year for his Gifts for Justice Matters; and actionable, for the Words *Partial Justice* touch him in his Office, and charge him with Corruption therein. *Mich. 4. Fac. int. Kemp & Housegoe. Cro. Fac. 90.* But 'twas held, no Action lay for any of the Words, except Partial Justice. *Vide Hern's Pleader, 114, 115. Hest. 173.*

That he was  
Witness,  
Judge, and  
Party, *&c.*

One said of a Justice of Peace, in a Matter wherein I was question'd at the Quarter-Sessions, He was Witness, Judge and Party, and did there oppres me. *Hest. 169, 170, 172.* A long Argument thereupon, but no Judgment.

He is an Half-  
Ear'd Justice,  
*&c.*

One said of a Justice of Peace, He is an Half-Ear'd Justice, he will hear but on one Side; and adjudged actionable. *Int. Sir William Malmesbury & Bridges. Trin. 7. Car. Vide Cro. Car. 223.*

To say, My Lord Chief Baron cannot hear of one Ear; said to be actionable, if he spoke upon a *Colloquium* of his Administration of Justice, else not. *Helt. 167.*

*A.* said to *B.* You would be a Justice of Peace like Major *C.* a Fool, an Als, a Coxcomb, a Buffle-headed Justice; not actionable. *Mich. 13. Car. 2. int. Bill, & Field. 1. Syd. 67.* *A* like Major *C.* a Fool, an Als, a Cox-adjudged: Though upon the first Motion the Court inclined for the Plaintiff, because the Words undervalued his Judgment, and such a Liberty in slandering Magistrates ought to be restrain'd; yet after, it was adjudged for the Defendant.

*Vide 1. Lev. 52.* And there said, That the Words which found in Disability only, are not actionable, if not spoke of one that gets his Living by that in which the Words disable him.

One said of a Justice of Peace, He is a sworn Justice, and not fit to be a Justice of Peace to sit upon the Bench, and so I will tell him to his Face; an Action lies, for the Words plainly affect him in the Execution of his Office. *Adjudged int. Kirle & Osgood, Mich. 21. Car. 2. Vide 1. Mod. 22. Vide 1. Syd. 432. & 1. Vent. 50. & 1. Lev. 280.* Same Case adjudged, though there was no *Colloquium* laid of his Office; for by the Words of themselves, it appears they were spoke in respect thereof.

One said of a Justice of Peace, He is not worth a Groat, and he is gone to the Dogs; but not held actionable: Notwithstanding the Statute of H. 6. requires that a Justice of Peace should have 40*l.* per Ann. *Pas. 26. Car. 2. & 1. Ven. 258.*

If

How a Justice  
ought to De-  
clare.

How for cal-  
ling him  
Briber.

Freehold in  
an Office.

Justice refus-  
ing to exa-  
mine my Ser-  
vant that was  
robb'd.

Attachments  
against Justi-  
ces.

Against a  
Justice, For  
allegding Fe-  
lony against

If a Justice of Peace declares, *Quod cum fuit constitutus a Justice of Peace, &c.* he ought to shew how, and by whom; but if he shews generally that he is a Justice of Peace, that is well enough. *I. Buls. 15.*

But in an Action by a Justice of Peace for calling him Briber, &c. the Plaintiffs must expressly shew in the Declaration, that he was a Justice of Peace at the Time when the Words were spoken, because the Slander to his Person is only in respect of his Office; which being by Commission, is at the King's Pleasure only. *Trin. 7. Jac. int. Tutbill & Mil-  
ton. Yelv. 158, 159.* Yet after Verdict, it shall not be intended to be determined. *Palm. 566.* That a Freehold in an Office shall be intended to continue. *All. 63.*

If my Servant is robb'd, and he goes to a Justice of Peace, and prays to be examined touching the Robbery, and the Justice refuses to examine him, so that I am thereby damned, and cannot proceed against the Hundred, I may have an Action against the Justice, for the Examination by him in this Case is not as a Judge, but as a particular Minister, by the Act appointed for this Purpose. *Vide Stat. 27. Eliz. Cap. 13. Trin. 31. Eliz. & 1. Leon. 323.*

An Attachment may and hath been granted against Justices of the Peace, out of the Court of B. R. for proceeding upon an Indictment after a *Certiorari* out of this Court, deliver'd unto them to remove the Indictment hither. *Stile's Rep. 9.*

If a Justice of Peace, *maliciose & invide machinans J. S. de bonis nomine fama & vita* the Plaintiff in his Warrant, &c. Whereas, &c. depris-

deprivare, directs his Warrant to several Constables to apprehend J. S. alledging in his said Warrant, That J. S. was accused before him for the stealing of an Horse; whereupon he is arrested and detain'd, till he enters into a Bond for his Appearance, whereas he was not accused, nor stole such Horse, an Action will lie; for though the Justice is excused when upon a false Accusation he sends out his Warrant, yet 'tis otherwise where he makes it out without any Accusation at all. *Adjudged, Trin. 31. Eliz. int. Windham & Cleer. 1. Leon. 187. Gen. Abrid. 290. Pl. 15.*

Yet if a Justice of Peace procures some Justice procures Witnesses to appear and give Evidence upon an Indictment, this is but his Duty; and though his Name was endorsed upon the Indictment to give Evidence, yet this made him not a Prosecutor, and so no Action lies against him for a malicious Prosecution. *Adjudged int. Girlington & Pitfield, 1. Ven. 47. 2. Keb. 572. Cro. Eliz. 130. Vide Gen. Abr. 210. Pl. 15.*

And if one maliciously indites a Justice of Peace for delivering of a Vagrant out of Custody without Examination, contrary to Law, an Action will lie; for the Indictment contains Matter of Imputation and Slander, as well as Crime; and 'tis not like an Indictment of *Forcible Entry*. *Adjudged, Pas. 21. Car. 2. int. Henly. & Burstall, Raym. 180. 1. Ven. 24.* same Case; the Indictment being there, for rescuing a Vagabond out of the Constable's Hands. *Vide 2. Keb. 486. 494. & Gen. Abrid. 211. Pl. 17.*

Note,

Of producing  
Witnesses be-  
fore a Justice  
to prove a  
Debt.

*Note.* It's said, That if the Father of A. was indebted to B. and A. promises B. that if B. will bring Two Witnesses before a Justice of Peace, who upon their Oaths shall depose that the Father of A. was so indebted unto B. that then he will pay it, if B. does produce his Witnesses, &c. He may have an Action upon this Promise against A. for the Consideration is not unlawful, nor the Oath Prophane. *Mich. 15. Car. 2. int. Amy & Andrews,* adjudged by *Windham and Atkins* against *Vaughan*; who held, that such an Oath illegally administered and taken, was within the Statute of Prophane Swearing. *Vide 1. Mod. 166.*

To take an  
Oath before  
the Mayor of  
London.

*Simile*, before  
a Master in  
Chancery.

See *Cro. Eliz. 469, 470.* where the Consideration was to take such Oath before the Mayor of London. *Bret & Prettiman*, like Point. 1. *Syd. 283. Raym. 153.* 1. *Keb. 26, 44.* adjudged, where the Consideration was to take such Oath before a Master in Chancery. 2. *Syd. 123.* like Point adjudged, where the Oath was to be taken before a Master in Chancery; and a like Point there cited to have been adjudged, where the Oath was to be taken before a Judge of Assize.

## C H A P. IV.

*For Disturbing the Process of the Law, &c.*

**A**N Action of the Case will lie against For hindring him that shall hinder, disturb or prejudice, him that hath the Franchise or Liberty of the Execution and Return of Law-Process in a Hundred or other Place. *F. N. B.* 95.

*Reg. Orig.* 103, 104.

So if a Man be disturbed to take the Profit of his Office. *1 Cro.* 548. *Popb.* 141. To take the Profits of his Office.

So against him that shall disturb an Officer in the Execution of his Office, as in the Attaching and Distreining of Goods, and lieth either for the Officer or Plaintiff in the Suit. Hindring to attach or di-strein Goods.

*N. B.* 102.

So if one hinder an Officer in doing of Execution in his Office, at my Suit ; as where the Sheriff shall come to another Man's House, where the Goods of the Defendant are, and the Door of the House being open, doth shut the Door, and keep him out ; or the Owner of the House, or another Man, shall convey away the Goods, and prevent Execution, I may have an Action against him. For hindring an Officer in doing Execution at my Suit, in the House of a Stranger.

But if a Man do so in his own House, or *Alier*, if in to prevent the Execution of his own Goods, his own no Action will lie. *5 Co.* 91. *1 Cro.* 308, 309. *Wood's Case.* *Vide postea.*

So

So of the Goods of J. S. in the House of K. L.

For conveying away the Goods to be attached at my Suit.

Sheriff may not break open a Man's House upon a *Ca' Sa'*.

Against the Defendant, for shutting his Door, and hindring the Sheriff to seize Goods, &c.

So if I have an Execution against the Goods of J. S. and he hath Goods in the House of K. L. and the Sheriff comes to the House, and tells K. L. who he is, and wherefore he comes, and desires him to open the Doors to him, and he keeps him out, that he cannot do Execution, I may have this Action against K. L. 5 Co. 92.

So if an Officer be coming to arrest a Man, or attach his Goods, at my Suit, and another Man convey away the Goods or the Person, so that the Officer cannot do his Work, I may have this Action. F. N. B. 102. 21 H. 7. 40. 18 Ed. 1. 3.

But it was agreed, That upon a *Ca' Sa'* the Sheriff may not break open any Man's House to make Execution, but he is punishable for it: But upon a *Capias Utlagatum*, he may enter any Man's House to apprehend him; for no Place ought to protect him against the King: But whether he might upon a *Fieri Facias*, or *Extendi Facias*, break the House of any to make Execution, was doubted: But, no doubt, if the Doors were open, he might enter; for the Law gives him Authority thereto; as an Executor may enter to take Goods left there by the Testator. 1 Cro. 908. *int.*

*Seyman & Gresham*: Which Action was brought against the Defendant for shutting his Door, and hindring the Sheriff to seize the Goods of G. B. in his House. And *Fenner* and *Yelverton* were of Opinion, That the Goods being in the Defendant's House, who is a Stranger to the Execution, he is not bound to take Cognizance of the Sheriff's Intent, in coming to make Execution; and his shutting the Door was lawful: And although there was Loss to the

the Plaintiff, yet it was *Damnum sine Injuria*. And it appeared not, that the Goods of the Cognisors which were in the Defendant's House came thither; and if they were taken by the Defendant as a Trespasser, the Party whose Goods they are, or the Sheriff upon Execution, may come within the House, if the Door be open, to seize them, because the Defendant had them by unlawful Means.

But if the Defendant had taken them by lawful Means, *viz.* by Bailment or otherwise, neither the Party himself nor the Sheriff can come within the House to seize them: And therefore the Shutting the Door was no Cause of Action for the Plaintiff.

To this, *Williams* agreed *in omnibus*; and that the Sheriff might not break any Man's House to take Execution, unless in the Case of the King, or for a Contempt; and thereupon Judgment for the Defendant.

*After*, where  
the Defen-  
dant takes in  
Goods by  
lawful  
Means, as  
Bailment, &c.

Where the  
Sheriff may  
not break a  
House to  
make Execu-  
tion.

## C H A P. V.

## Sheriff and his Officers, &amp;c.

Where the Consideration and Promise to a Sheriff are a gainst Law, being made by a Stranger.

Sheriff's Duty.

Aliter, where by the Plaintiff himself.

Promise by the Plaintiff to the Sheriff, upon making J. S. Special Bayliff.

Promise to Pay a Stranger for getting an out-law'd Person arrested.

**I**F an Executor sues Execution by *Elegit*, and *B.* a Stranger, as a Friend to the Executor, in Consideration that the Sheriff would forthwith execute the said *Elegit*, and of 6 d. by him to the Sheriff paid, promises to pay him 60 l. upon which the Sheriff executes the Writ; yet no Action lies, because the Consideration is against Law: For the Sheriff ought to do his Duty without Reward; and this 60 l. is no Discharge of the Fees due to the Sheriff by the Statute, being given by a Stranger, and not expressed for him. *Adjudged int. Bridge & Cage, Mich. 3 Jac. B.* But 'tis otherwise where given by the Plaintiff himself. *1 Rol. Abr. 26. Pl. 41. Cro. Jac. 103.*

If a Man brings a *Capias* that he has against *A.* to the Sheriff, and prays him that he will make *J. S.* his Special Bayliff, and promises him, That if he will make him his Special Bayliff, if *A.* escapes from the Bayliff, he will bring no Action for the Escape against him. This is a Promise upon which an Action lies, if he brings any Action against the Sheriff for the Escape: Affirm'd in Error. *1 Leon. 132. Cro. Eliz. 178. Owen 97.*

If *A.* be outlaw'd at the Suit of *B.* upon a Proces for Debt, and *B.* promises, in Consideration that *C.* a Stranger, will arrest *B.* upon a *Capias Utligatum* upon this Outlawry, That he will pay him 40 s. This is no good Cons:

Consideration to have an Action, though he shews in his Declaration, That he was after, by a Warrant to him directed, made a Special Bayliff to the Sheriff to arrest him there-upon ; for this is Extortion, and the Sheriff Extortion.

by such Means might extort from the Subject great Fees for doing his Duty. *Trin. 22 Fac. B. R. Noy 76.* But said, That an *Assumpsit* made to a Stranger, in Consideration that he would assist the Sheriff, is good. *Vide 1 Jones, assist, &c. 65.*

But Promise  
to a Stranger,  
That he will  
assist, &c.  
good.

If *A.* levies a Plaintiff in the Court of Step-  
ney against *B.* upon which a Precept is dire-  
cted to *C.* the Bayliff there, to attach the Goods of *B.* and thereupon *C.* attaches cer-  
tain of the Goods of *B.* and *A.* in Conside-  
ration that *C.* will deliver those Goods to him to deliver at the next Court, assumes and pro-  
mises to save *C.* harmless, &c. this Conside-  
ration is void, and against Law ; for the Bay-  
liff ought not to deliver them to the Plaintiff. *Paf. 33 Eliz. int. Mead & Bigot. 3 Leon. 236.*  
*Cro. Eliz. 230.*

Void, and a-  
gainst Law.

If upon a *Fieri Facias* the Sheriff taketh away Goods in the Sheriff's Cu-  
Goods in Execution, and before the Sale of them, a Stranger takes them away out of his Possession, and converts them to his own Use, the Sheriff may have an Action of Trover and Conversion, for he had a lawful Possession, and is answerable for them. *Hill. 21 Car. 2. int. Wilbraham & Snow. 2 Saund. 47.*  
*1 Mod. 30. 1 Syd. 438. 2 Keb. 589. 1 Lev. 282.*

By the Report of the Case in *1 Ven. 52.* it appears, the Goods were taken away by the Defendant in the Execution, and adjudged *per quer'.*

That Possession without Property is enough to maintain Trespass, but not Trover. *Per 2 Bul. 135.*

Promise to a  
Jaylor to suf-  
fer one in Ex-  
ecution to go  
at large, void.

*Aliter,* if to  
the Plaintiff  
himself.

Promise to a  
Bayliff to de-  
liver a Prisoner  
into Cu-  
stody, if he  
will suffer  
him to contin-  
ue in the  
House of C.  
for a Night,  
good.

Like Promise  
to the Bayliff,  
and Action  
brought by  
the Plaintiff  
thereon.

If *A.* is in Execution at the Suit of *B.* and *C.* in Consideration that the Jaylor will permit *A.* to go at large, assumes and promises to him, That *A.* shall pay the Debt by a certain Day, and that he the said *C.* will save the Jaylor harmless: This Promise, it's said, is void, because the Consideration is against Law. *Hill. 8 Jac. int. Martin & Blithman.* *Yelv. 197. Vide Hetl. 175. & 10 Co. 192. Cro. Eliz. 199. 2 Bul. 213.* But such a Promise to the Plaintiff is good, for that he may lawfully discharge him. *Cro. Eliz. 190.*

If *A.* is arrested, and *C.* in Consideration that the Bayliff will suffer *A.* to continue in the House of *C.* till the next Morning, assumes and promises then to deliver him in safe Custody to the Bayliff: This Consideration, it's said, is good, and not against Law. *Pas. 15 Car. 2. int. Benskin & French. 1 Syd. 132. 2 Lev. 17. dubitatur;* but adjudged, where the Promise was made to the Bayliff, in Consideration that he would permit the Prisoner to continue at the House of *J. D.* for 3 Days, *&c. 2 Keb. 805.* Said the Court inclined, that the Consideration was not good.

*Vide 1 Lev. 98.* the same Case adjudged *Nisi*, the Promise being to deliver him, or pay 10 l. and the Action being brought by the Plaintiff himself, who declared, upon a Promise to the Bayliff, *ex Parte quer'.* So that if he was

was out of Custody, it must be intended by the Assent of the Plaintiff, because the Promise was made to the Bayliff *ex parte quer'*, And by bringing the Action, he has affirmed his Assent. *1 Keb. 483.* same Case.

If a Man sues a *Fieri Facias* to have Execution, and says to the Sheriff, such are the Goods of the Party, shewing them to him; upon which, in Consideration that the Sheriff will execute the Execution upon those Goods, he promises to save him harmless: This is no good *Assumpſit*, because he ought to take Notice of them at his Peril. *Mich. 14 Jac. B. R.*

*Moor 455. Pl. 629. Cro. Jac. 652.* Same Point adjudged con.

But if *A.* delivers an Execution to the Sheriff at his Suit against *B.* and in Consideration that the Sheriff, without any Fee, will execute it, he promises to pay him a certain Sum, which is as much as the Sheriff is allowed to take by the Statute 28 Eliz. though it be admitted, that the Sheriff can have no Remedy for his Fees; yet because it was lawful for the Sheriff to take his Fees, and he made the Execution at his Request, and this is for his Benefit, it is a good Consideration. *Hill. 41 Good. Eliz. in B. R. int. Stanton & Suliard. Moor 468.*

*Pl. 669. Cro. Eliz. 654.*

If *A.* and *B.* are both Sollicitors for the Office of Under-Sheriff, and *A.* in Consideration that *B.* will desist, assumes and promises to *B.* That if he the said *A.* obtains the said Office, he the said *A.* will pay unto *B.* 20*l.* for a Horse, &c. This Consideration is said to be good and valuable. *Hill. 18. Jac. int. Parker & Brown. Cro. Jac. 612. adjudged. Gen. Abr. 60:*

Promise to  
the Sheriff  
upon an *Elegit*, where  
Part is legal,  
and Part ille-  
gal.

The Whole  
naught.

If *A.* obtains a Judgment against *B.* and thereupon takes out an *Elegit*, and delivers it to the Under-Sheriff, who by Virtue thereof seizes certain Goods of *B.* and afterwards the Under-Sheriff, in Consideration that *A.* will take out a new *Elegit*, and deliver it to him, he promises to cause and procure the said Goods to be found by Inquisition, and to deliver the same to such Person as *A.* shall appoint, &c. This Promise, it's said, is against Law, being to do a Thing against the Duty of his Place, by which he is bound to return an indifferent Jury; and though Part of the Promise was to do a lawful Act, yet since that depended upon the other Part, which was illegal, the Whole is naught. *Mich. 23 Car. 2. int. Morris & Chapman. 2 Jon. 284. Cart. 223. Gen. Abr. 68.*

### *For Words spoken of Sheriffs, &c.*

Words spo-  
ken of a She-  
riff, Thou  
art as cozen-  
ing a Fellow  
as any in the  
Country, &c.

One said of an Under-Sheriff, Thou art as cozening a Fellow as any in the Country: The last Time thou was Under-Sheriff, as now thou art, thou didst serve an Execution for a Neighbour of mine, and didst keep the Money in thy Hands. No Action lies upon these Words; for it is uncertain for what Time he kept the Money; and perhaps he kept it only till the Return of the Writ, or by the Consent of the Plaintiff. *Adjudged int. Geere & Copshall, Mich. 43. Eliz. Cro. Eliz. 854.*

A Writ was delivered to *A.* to deliver to the Sheriff of *N.* to be executed, which *A.* neglecting to deliver, *B.* the late Sheriff of *N.* sends his Man for it, and orders him to deliver

ver it ; and thereupon A. says, Your Master must not think to have such Huddling and Shuffling of Matters this Year as he had the last Year ; yet not actionable. *Adjudged Cro. Eliz. 848.*

A Man said of a Jaylor of a County-Pri-  
son, He doth let go Prisoners, and is a Par-  
taker with them : And he had never a Sheet  
on his Bed, until he let Prisoners go to steal  
them. No Action lies for these Words, with-  
out an Averment, That he had some Sheets  
upon his Bed. *Adjudged, Mich. 42, 43, Eliz.*

*B. R. Heath's Case.*

The Sheriffs of London brought an Action upon the Case, for that the Defendant being in Execution under their Custody for 53 l. adscit' Spicer, had escaped, Spicer not satisfied, whereby they were compelled to pay the Debt. The Defendant confesses all the Matter, and pleads, That after his Escape, Spicer had acknowledged Satisfaction on Record. The Plaintiff demurr'd ; and it was adjudged for the Defendant : But held, That an Action on the Case lieth against a Prisoner for an Escape out of Execution, to the Intent to make the Sheriffs chargeable with the Debt. *F. N. B. 130. Cro. Eliz. 237. int. Salston & Payne.*

So it's said, if one in Execution escape, the Sheriff may not retake him, but upon fresh Pursuit ; yet he may have Case against him, or Trespals, quare Prisonam fregit. *Cro. Jac. Judges War- 657. 2 Rol. 802. 3 Co. Ridgway's Case.* But now a Prisoner escaping, may be taken up, by a Judge's Warrant, by a late Statute.

By an Executor against an Executor of the late Sheriff.

*ff.* Debt was brought by an Executor against the Defendant, as Executor of the late Sheriff, for Money paid to the Sheriff upon a *Ca' Sa'* prosecuted and delivered to the Sheriff, &c. Defendant pleads *non detinet*, and Issue thereupon, Special Verdict, and Judgment for the Defendant. *Vide 1 Lut. 582.*

Bail-Bond before Writ delivered.

Where a Bond given to the Sheriff for Appearance before the Writ delivered, was allowed good. *1 Keb. 554. Pl. 66.*

### Contra Sheriff sur Escape & Rescue, &c.

Sheriffs, &c. acting deceitfully in their Office.

If any Sheriff, or other Officer of any Court, that is employed to do any thing for another, shall do it deceitfully and falsely, to his Special Damage, he may have an Action on the Case against such Officer. *F.N.B. 95. 6 Co. 9. 9 Co. 32. 1 Cro. 175. Dyer 355.*

A Bayliff may not execute a Precept out of his Hundred.

The Under-Sheriff, upon an Action against the Bayliff of a Hundred, for not executing Proces, alledged the Manor was within the Hundred where he was Bayliff; which Thing he ought to alledge, for a Bayliff cannot execute a Precept out of his Hundred. *Stiles Rep. p. 18. 23 Car. 1. Aileyn, p. 10.*

Three escaped, and one Action against them all.

Six Men were bound in a Recognizance jointly and severally, and Three were arrested and in Execution, and suffered to escape; and the Plaintiff brought one Action of Debt upon the Statute for the Escape of them all; and adjudged good. *Kelw. 67, 68.*

Escape of one taken upon Outlawry, Action tam pro Rege quam pro seipso.

If after a Judgment in Debt, and an Out-Jawry thereupon, the Defendant is taken upon a *Capias Utlegatum*, and by the Sheriff suffered to escape; the Plaintiff not being satisfied, an Action, *tam pro Rege quam pro seipso*, lies against the

the Sheriff for this Escape, as well in Contempt of the King, as to the Prejudice of the Plaintiff. *Cro. Eliz. 877. 1 Rol. 78. Cro. Jac. 360.*

So if the Sheriff is often in the Defendant's Company, yet returns *non est inventus, &c.* Sheriff often in Defendant's Company. *Noy. 22. Cro. Jac. 532.* Adjudged and affirmed upon Writ of Error.

So Debt lies, without saying *tam pro Dom' Rege, &c.* *Cro. Jac. 619, 620.* for he may bring his Action for what he has lost : And the Precedents have been certified both Ways.

If a *Supplicavit* issues out of Chancery to the Bayliff makes Sheriff against *J. S.* and upon this the Sheriff Affidavit in makes a Warrant to the Bayliff to take him, *&c.* and after the Bayliff comes into Chancery, and there makes an Affidavit that he had took him, and that he had rescued himself; upon which *J. S.* is committed to the Fleet by the Lord Chancellor: Though the Affidavit be false by which he is committed to the Fleet, and so to his great Damage, yet because the Affidavit was made in a legal Course, though he was not compelled by Process to make it, no Action upon the Case lies; for then every Man would be deterr'd from making Affidavits in such Kind. *Mich. 18 Jac. B. R. int. Aier & Ridgwit,* adjudged in Arrest of Judgment. *Vide 12 Co. 128. & 3 Mod. 108. Palm. 142. &c. 2 Rol. Rep. 195, 197. &c. Cro. Jac. 601. &c.*

If a Bayliff, Errant or Special, arrests a Man upon a *Capias ad satisfaciend'*, and after the Prisoner rescues himself, he at whose Suit he was arrested cannot have an Action upon the Case for the Escape against the Bayliff, but the Sheriff must have it against the Sheriff, for the Bayliff is but a Servant to the Sheriff. *Agreed int.*

*Atterton & Harward, Mich. 37 Eliz. B. R.  
Cro. Eliz. 349.*

Against a Bayliff, for not carrying the Party before the Sheriff, in order to put in Bail.

So an Action lies not against the Bayliff for refusing Bail; but for not carrying the Party before the Sheriff, in order to put in Bail.

*2 Mod. 32.*

The Sheriff may have an Action against him that escapes.

In the same Case of *Atterton and Harward*, where the Prisoner escapes by Rescue of himself, it's said, the Sheriff may have an Action against him that escaped; for he is thereby chargeable over for this to *J. D.* And this Escape made to his Bayliff was an Escape to himself. *Cro. Eliz. 349.*

*Aliter*, by a Bayliff of a Liberty, for he is only chargeable.

But that if such a Prisoner taken by a Bayliff of a Franchise escapes from the Bayliff, the Sheriff shall not have any Action upon the Case against him, because he is not chargeable over, but the Bayliff only is chargeable. *Vide Cro. Eliz. 26.*

Sheriff may have an Action against the Bayliff Errant, if he will.

But in the other Case, the Sheriff, if he will, may have an Action against the Bayliff Errant for the Escape, because when he takes upon him to be his Bayliff, there is a Promise in Law to keep the Prisoner safely, and not to suffer him to escape. *Cro. Eliz. 349.*

If *J. D.* the Plaintiff recovers against the Sheriff, and the Sheriff against the Bayliff, the Bayliff may have an Action against *J. S.* that escaped. *Sed dubitatur.*

Also, that if in such Case *J. D.* recovers for this Escape against the Sheriff, who after in such Action recovers against the Bayliff, upon an *Affumpſit*, to save him harmless from Escapes, the Bayliff may after have an Action on the Case against *J. S.* that escaped, because he is chargeable over: But 'tis with a *Dubitatur*; for in the same Case, *Cro. Eliz. 349.* 'tis there said, That by the better Opinion of the Court, the Bayliff, (who in this Case was special, and liable

liable only on his Special *Assumpſit*) should not have an Action; for his voluntary Act shall not entitle him to an Action against a Stranger.

Again, that if the Sheriff recovers against *Simile.* the Bayliff for the Escape, (as it seem'd he might upon his *Assumpſit* in Law) the Bayliff may well after have an Action against *J. S.* who escaped, because he is charged over for it; but this also with a *Dubitatur, ut supra.*

If the Bayliff of a Franchise makes a false Return to the Sheriff, and the Sheriff returns it to the Court accordingly, an Action lies against the Bayliff, and not against the Sheriff, for no Default is in him. *Trin. 93 Eliz. B.R. int. Palmer & Marsh. Vide I Rol. 99. Pl. I. Moor 432. Cro. Eliz. 512.* The Lord of the Franchise must answer for it, if his Bayliff is unable. *2 Brownl. 50. per tot. Cur.* And such Bayliff shall answer for his Deputy. *Litt. Rep. 33. Vide postea.*

If *A.* recovers in Debt against *B.* and thereupon a *Ca' ſa'* is directed to *C.* the Sheriff of *N.* to take *B.* in Execution, which is accordingly done; and after *B.* rescues himself, *per quod C.* becomes liable to answer for the Debt. Now *C.* may have an Action against *B.* before *A.* sues *C.* for the Rescue and Escape was a Wrong to *C.* and he is always chargeable to *A.* for it: And if *C.* must stay till sued by *A.* *B.* may die in the *interim*, or flie his Country, &c. *Adjudged, Hill. 29 Eliz. int. the Sheriffs of Norwich & Bradshaw. Vide Cro. Eliz. § 3. & 123.*

If a Man be arrested upon mean Process at Rescue upon the Suit of *J. S.* and he escapes, *J. S.* may have a Special Action upon the Case against the Sheriff for this Escape. *Rol. Rep. 14 Jac. int. the Sheriff.*

*int. Proby & Lumly. Adjudged per Admittance, 16 Ed. 4. 3. by all the Justices. Vide Cro. Jac. 807. Moor 852. Pl. 1162.*

One that refuses to be examined concerning a Bankrupt's Estate, is taken, and escapes, *A.* the Creditor may have an Action.

If at the Petition of *A.* and the rest of the Creditors of *B.* a Commission upon the Statute against Bankrupts is issued out against *B.* and thereupon the Commissioners sit, and offer Interrogatories to *C.* and he refuses to be examined, and by them is thereupon committed to Prison, and the Jaylor suffers him to escape, *A.* may have an Action against the Jaylor for this Escape. *Adjudged, Trin. 12 Jac. int. Barns & Cary. Vide 1 Rol. Rep. 47. 2 Bul. 236. Moor 834. Pl. 1123.*

Sheriff makes a Warrant to the Bayliff of a Liberty, who takes the Party ; Sheriff returns *non est inventus.*

The Plaintiff declares, That upon a *Capias* against *J. S.* at the Suit of the Plaintiff, to the Defendant, being Sheriff of *E.* directed, the Defendant did direct his Warrant to the Bayliff of such a Liberty to take him, &c. who did take him accordingly ; yet the Defendant knowing thereof, had return'd *non est inventus.* *Cro. Eliz. 729. Adjudged per Quer.* But it did not there appear what or whether the Bayliff had made any Return to the Sheriff.

Bayliff of Liberty suffers Escape upon Execution ; Action against him only.

If a Writ of Execution comes to the Sheriff, and he makes out his Mandate to the Bayliff of a Liberty, who takes him, and after suffers him to escape ; an Action lies against the Bayliff of the Franchise, and not against the Sheriff. *5 Ed. 4. 1. Bro. Escape 40.*

A Warrant upon a *Fi' Fa'* to a Bayliff of a Franchise, he is removed, a new one elected, old Bay-

liff returns Administrator has no Goods, *preterquam*, &c. the

the which is false; and after the Sheriff makes a Return accordingly to the Court, yet no Action upon the Case lies against the old Bayliff, for the Return ought to have been made in the Name of the new Bayliff; and so the Sheriff had accepted of a Return as of a mere Stranger, which is void: And he ought to take Notice of the right Ministers of the Law; and therefore the old Bayliff is not punishable for this false Return, but the Sheriff. *Adjudged Trin. 39 Eliz. int. Palmer & Marsh, & Halmer & Porter.* Yet it does not lie against the Bayliff. *Vide 1 Rot. Abr. 94. Pl. 2. Moor 431. Pl. 606. Cro. Eliz. 512. See after, concerning a Bayliff.*

In an Action upon the Case for an Escape For Escape upon Mean Procelis, the Defendants, Sheriffs upon Mean Procelis, of London, plead, That the Prisoner was rescued from them; and the Plaintiff, by Replication, gives a History of the Matter, to prove that the Defendants might have brought the Prisoner to Jayl; and Judgment was given against the Plaintiff. *1 Lut. 129. See after.*

It's said, a Sheriff is not bound to return a Writ directed unto him, except the Party whom the Writ doth concern, doth tender him his Fees for the executing of it; that is, in such Cases where he is allowed Fees; Yet a Quære is made thereof; for that the very Words of Writ do enjoin the Sheriff to make a Return of them: So that it seems he is to return them, whether the Parties concerned do call on him or not: And if he be not paid his Fees where he is allowed to take them, he may recover them by an Action. *Pract. Reg. last pub. 586, 587.*

If a Sheriff omits the Returning of an Action against a Prisoner charged with such Action charged;

Omitting to return an Action against a Prisoner

Is an Escape.

Action in his Custody, when such Prisoner brings his *Habeas Corpus* to turn himself over to the *Queen's-Bench*; this is an Escape in the Prisoner, as to the Action omitted to be return'd, and the Sheriff shall be answerable for it. *Id.* 588.

Sheriff fined  
on Return of  
a Rescue.

On the Return of a Rescue on Execution, the Court fined the Sheriff 100*l.* and held it void; but upon Indictment of Rescue, the Court will bring in the Rescuers, but will do nothing on the Execution; but on Mean Process it's good. *2 Keb.* 571. *Pl.* 80.

Scape-War-  
rants execu-  
ted on the  
Lord's-Day.

*Note,* That by a late Act of 5 *Anne Regi-  
næ*, for the better preventing Escapes out of the *Queen's-Bench* and *Fleet Prison*, it is Enacted, That it shall be lawful to apprehend and take upon the Lord's-Day any Person or Persons, by Virtue of any Warrant or War- rants granted in Pursuance of the said Act, or of all former Acts for that Purpose.

So for good  
Behaviour.

Also it is said, That a Warrant directed to a Constable to take *H.* to find Sureties for his good Behaviour, may be executed on a *Sun-  
day*, notwithstanding *Stat. 29 Car. 2. Chap. 9.* See after; & vide *Raym.* 250, 251.

Party taken  
by the Sheriff  
in Execution,  
after Writ of  
Error and  
*Supercedens.*

Where the Defendant brings a Writ of Error to reverse a Judgment given against him, and hath a *Supercedens* to stay Execution upon the Judgment, directed to the Sheriff of that County where the Execution is to be done, and yet he is taken by the Sheriff, by Virtue of an Execution taken out upon this Judgment before the Writ of Error brought, but not executed till after the Writ allowed, and *Supercedens* sued out; upon moving of the Court, they will grant him a *Supercedens* to supercede this Execution. *Pract. Reg.* 479.

*Against*

## Against the Sheriff, &amp;c. for other Matters.

If a *Capias* be directed to the Sheriff who takes the Party, and takes a Bond of him for his Appearance, according to the Statute, 23 H. 6. and at the Day of the Return of the Writ thereupon he returns *Cepi Corpus*, but the Defendant does not appear at the Day: Yet no Action on the Case lies, because there is not any Falsity in the Sheriff, for he bail'd him by the Command of the Statute, and he is to be amerced by the Court, if the Sheriff takes the Party upon a *Cap'*, bails him, returns *Cepi Corpus*, but Defendant appears not at the Day. No Action against the Sheriff. Defendant do not appear. *Adjudged int.*

*Bowels & Lassels*, Mich. 43, 44. Eliz. B. R.  
Vide 2 *Saud.* 59. & 1 *Syd.* 23, 24.

So if he returns *Cepi Corpus & parat' habeo*, &c. for the Return in effect, and construction of Law, is true, 2 *Mod.* 83, 84. & 1 *Mod.* 244. But in this Case it's said the Defendant must not deinur to the Declaration, but must plead the Statute. *Moor* 428. *Pl.* 596. *Cro. Eliz.* 460.

But see 1 *Mod.* 57. where adjudged *contra*, *aliter*. If he by Three Judges against One; and the Reason there given is, because the Plaintiff had relied upon the Falsity of the Return, *Quod paratum huit*, &c. See 1 *Ven.* 85, 86. adjudged the Plaintiff to be entitled upon the Roll, because the Defendant had not pleaded the Statute. *Vide 2 Sand.* 155. & 2 *Keb.* 670.

Or else, upon not Guilty, the Defendant may give it in Evidence. 1 *Syd.* 439. 1 *Mod.* 58. 1 *Ven.* 85. But if not given in Evidence, perhaps after Verdict he is without Remedy, and Judgment shall be given for the Plaintiff. 1 *Syd.* 23.

*Vide*

Where the Sheriff return'd *Languidus*, having bail'd the Party where he might have return'd the Truth.

*Vide Cro. Eliz. 852.* Same Case with the Principal adjudged, the Return being, That he was *Languidus, &c.* which the Court said was immaterial as to the Plaintiff, the Sheriff having bail'd him according to the Statute: *Noy 39.* Same Case adjudged, the Return being, That he was *Languidus, &c.* though no such Return was ever seen before; and he might have return'd the Truth, That he had let him at large upon Bail. But whether he could have made such a Special Return, *Quære & vide 1 Syd. 439. 1 Mod. 57. 2 Mod. 86, 180. & 2 Ven. 86.*

Escape against Sheriff, he pleads the Statute, and good Bail taken, traverse that he took good Bail: And Judgment *pro* Def.

The Plaintiff declared, That the Sheriff of Y. arrested J. S. at his Suit, and afterwards suffered him to go at large; Defendant pleads the Statute, and that he took good and sufficient Bail, Defendant by *rep'l* traverses he took good and sufficient Bail, Defendant demurs. Adjudged the Action lies not, for *quoad* the Plaintiff, the Sufficiency of the Bail is altogether immaterial, 'tis for the Security of the Sheriff, and if the Party does not appear, the Plaintiff need not to take an Assignment thereof, but proceed against the Sheriff by way of Amercement, and leave the Sheriff to take his Advantage against the Bail. *Hill. 28 & 29 Car. 2. int' Ellis & Tarborough. 2. Mod. 177. 1 Mod. 277.*

That the Bail was not sufficient.

No Plea.

The Plaintiff declared, That the Defendant had taken insufficient Bail, on purpose to deceive and defraud the Plaintiff, &c. *1 Syd. 96.* In an Action upon a Bail-Bond one of the Sureties pleaded, He was not sufficient, and held no Plea. *Moor 630. Pl. 875. Cro. Eliz. 862. 2 And. 175.*

If a *Venire Facias* comes to the Sheriff in a *Quare Venire fac'*, to the Sheriff, who sends it to the Bayliff of the City, and not to the Bayliff of the Franchise, the Pannel is quash'd, and Action lies against the Sheriff.  
*Impedit*, and the Sheriff sends to the Bayliff of the City of C. to return the Pannels, who does it accordingly, whereas he had no Warrant to do it, not being Bayliff of the Franchise, for which the Pannel is quash'd; the Plaintiff for this Default in the Sheriff, and for his Damages, shall have an Action upon the Case against the Sheriff. *Adjudged*, 38 *Aff.* 13 *Br.* *Bill* 21. *Return de Brief*, 77. *Action sur le Cas*, 120. *Vide 1 Rol. Abr.* 94. *Pl.* 2. 2 *Vent.* 26 *Fitz Barre* 307. 2 *Mod.* 32.

If a *Distringas* Issues to the Sheriff to restrain the Defendant in an Action by all his Lands and Chattels, &c. and the Sheriff returns too small Issues, though an Averment lies by the Statute of *Westminster*, 2 *Cap.* 43. Yet the Plaintiff may well have an Action upon the Case against the Sheriff, because it appears by the Words of the Statute, that this is a false Return. *Br. Dam.* 69. *Averment* 12. *Vide Stat. explain'd*, 2 *Inst.* 449.

The Words are, That he should distrein him by all his Lands and Chattels, *ita quod de Exitibus eorum*, &c. So that if he does not return all the Issues, he does not do as he is commanded; also, if this Action doth not lye, the Plaintiff had no Remedy at the Common Law, which was very mischievous; and the Statute ordains, That the King shall have the Issues, but does not restrain the Plaintiff of any Remedy that he had at the Common Law. *8 H. 6. 12. & vide 10 H. 7. 11.*

If the Sheriff takes an Inquisition upon an Elegit, and upon Request refuses to deliver and refuses to deliver Possession, yet returns he had Action lies for this false Return.

*Pof-*

Possession to the Plaintiff, and yet after, at the Day of the Return of the Writ, returns that he had delivered Possession to the Plaintiff at the Day of the Inquisition taken; an Action upon the Case lies against him for this false Return, though the Plaintiff after Inquisition might enter without any Delivery; for perhaps the Possession is kept with a strong Hand, so that he cannot enter without the Aid of the Sheriff. *Hill.* 8 Car. B. R. *Adjudged int. Lister & Bromley.* *Vide Winch. Rep.* 100. Like Point.

Where an Under-Bayliff of a Liberty levies the Debt, and afterwards conceals the Writ, &c.

If a Warrant upon a *Fieri facias*, to levy a Debt at the Suit of J. S. be directed to an Under-Bayliff of a Liberty, and he by force thereof levies the Debt, and after conceals the Writ, and makes not any Certificate thereof; an Action lies against him, because he has done a Personal Tort. *Adjudged, Mich.* 12. *Jac. int. Bell & Catesby.* *Vide 1 Roll. Rep.* 78.

For a false Return of a Member of Parliament.

*ff.* Plaintiff, brought an Action against the Defendant for a false Return of a Member of Parliament, instead of the Plaintiff who was duly elected, and for that no Determination in Parliament was alledg'd by the Plaintiff, or found in the Special Verdict, Judgment was given for the Defendant. *I Lut.* 82.

A Bayliff is a Servant to the Party that employs him.

A Bayliff is a Servant or Minister of the Law, and by consequence he is a Servant to the Party, at whose Suit he is to arrest any one, and therefore is answerable to the Law, and to the Party, for Miscarriages in his Place. *Pract. Reg. last pub.* 122.

A Sheriff's Bayliff no Officer of Court.

Yet a Sheriff's Bayliff is not an Officer of the Court, but the Sheriff himself is the Officer that the Court takes notice of, but the Bay.

Bayliff of a Liberty is such an Officer as the Court will take notice of. *Ibid.*

But if a Sheriff's Bayliff misbehave himself Yet the Court in the Execution of the Proces of the Court will punish of *B. R.* the Court will punish him for so him. doing. *Ibid.*

It was allowed, That a Bayliff may execute He may execute a Writ out of the Hundred where he is Bayliff, for he is a Bayliff all the County over, if he be the Sheriff's Bayliff, and not a Bayliff of some Liberty within the County.

*Id. 121.*

That no Bayliff or Sheriff's Officer shall He must not presume to exact or take from any Person, being in his Custody by Arrest, any Warrant to acknowledge a Judgment, but in the Presence of an Attorney for the Defendant, which Attorney shall then subscribe his Name thereunto, upon Pain of being severely punished for so doing. *Id. 121, & 71.*

Also it was held, That a Warrant to confess a Judgment, taken of a Man under Arrest, in the Presence of an Attorney's Clerk or Solicitor, was void. *Id. 122.*

An Attachment was granted out of *B. R.* a Attachment against a Sheriff, for refusing to bring Monies against a into the Court, which he had levied upon an Sheriff, for Execution, and was order'd by the Court to not bringing bring it in, for the Sheriff is an Officer of the Court. *Court. Id. 54.*

An Attachment was granted against the Sheriff of *C.* for that he return'd that he had not making a taken Goods upon a *Testatum fieri facias*, but Return of a that they remain'd in his Hands for want of Buyers; whereupon, a Writ issued to put them to Sale, of which he made no Return nor any Satisfaction to the Plaintiff. *Id. 55.*

For making  
a frivolous  
Return of a  
*Hab' Cor'*.

The Court was moved for an Attachment against the Sheriff of S. for making a frivolous Return of an *Habeas Corpus*, viz. That the Committee for Poor Prisoners had ordered he should not bring the Body till they had consulted the Lord Chief Justice: And *Roll*, Chief Justice, said, Take another alias *Habeas Corpus*, with a Pain of 80*l.* *Stil. Rep.* 422.

For arresting  
on the Lord's  
Day.

An Attachment was granted against Two Bayliffs, for arresting upon the Lord's Day, when they might have done it as easily any other Day of the Week. *Pract. Reg.* 56.

Against Stat.  
29 Car. 2.

By *Stat. 29 Car. 2. cap. 9.* It is enacted, That no Person on the Lord's Day shall serve any Process, &c. except in Cases of Treason, Felony, and Breach of the Peace, but that such Services shall be void, and the Persons serving the same shall answer Damages, as if they had done the same without Warrant. *Vide Raym. 250, 251.*

For execu-  
ting Proces-  
s against Rule  
of Court.

An Attachment was granted by the Court of *B. R.* against a Bayliff, for executing the Process of the Court against the Rule of the Court, he having Notice of the Rule. *Pract. Reg. 56.*

Attachment  
against a Bay-  
liff of a Li-  
berty.

So an Attachment was granted against a Bayliff of a Liberty, who on a *Latitat* had arrested the Defendant, and taken Sureties, and return'd a *Cepi Corpus*, but never brought in the Body; but combining with the Defendant, let him go at Liberty. *Raym. 193.*

For driving a  
Distress.

So an Attachment was granted against a Bayliff, for driving a Distress into a Franchise, and would not suffer *Replevin* of them. *1 Keb. 804. Pl. 72.* See after, concerning a Bayliff of a Manor.

An Attachment, it's said, cannot be granted against the Marshal of the King's Bench, for this would be to let all the Prisoners escape; but a Fine may be set upon him by the Court for Misdemeanors in his Office. *Pract.*

*Reg. 57.*

A Sheriff out of his Office cannot be fined by the Court, because he ceaseth to be an Officer of the Court, but a Tipstaff may be sent for him, to bring him in to answer a Misdemeanor committed by him when he was in his Office; also the Process which the Law allows against him when he is out of his Office, *Distringas nuper Vic'*, is a *Distringas nuper Vic'*, and *Distringas* after *Distringas* until he doth appear. *Pract. Reg. last pub. 587.*

Where a Sheriff takes a Bail Bond, warranted by the Statute of H. 6. of Two good Men of visible Estates in the County at the solvent Time of the taking thereof, and afterwards it becomes insolvent; yet the Sheriff shall be excused, for he is obliged to let to Bail upon good Security; and this Security, at the taking thereof, though it prov'd insolvent afterwards, was good Security. *Id. ibid.*

That the Old Sheriff of a County is Sheriff How long he until the New Sheriff be sworn, although he continues be chosen. *Ibid.*

That the Under Sheriff ought always to have his Deputy to be Attendant in Court, to receive and execute their Commands, and to give an Account to the Court of Businesses which may fall out concerning the Sheriff and his Office, and ought to File a Warrant of Attorney for his High Sheriff, in every Warrant for one of the Courts at *Westminster-Hall*, by an Attorney of each Court, otherwise an Action Sheriff.

upon the Statute lies against his High Sheriff for such Neglect. *Id.* 587, 588.

Both Sheriffs of London are *don*, are in Law but one Sheriff of Middlesex, one Sheriff of Middlesex.

That both the Sheriffs of the City of London are *don*, are in Law but one Sheriff of Middlesex, and all Processes are directed to them as one Sheriff, and all Bail-Bonds enter'd into to them, and sued by them, are all enter'd into, and sued, as if enter'd into to one Sheriff. *Id.* 588.

Sheriff must answer for the Misdemeanors of his Bayliffs.

That every Sheriff ought to answer for the Misdemeanors of his Bayliffs, for they are his Servants, and ought to be under his Government; and he usually takes Security for their faithful and just Performance of their Duties in their Places. *Pract. Reg.* 588.

One arrested as attending the Court, and discharged. The Court of *B. R.* was moved to discharge one *C.* that was arrested, as he was attending the Court to give Testimony as a Witness in a Cause, and for an Attachment against the Parties that did arrest him. *Roll, Chief Supersedes & Justice,* said, Take a *Supersedesas*, and let the Attachment. Parties shew Cause why an Attachment shall not be granted against them that arrested him. *Id.* 56, 500, 504. See after.

Sheriff when amerced, if he return that he cannot do Execution. It's said, a Sheriff, who cannot do Execution by a *Posse Comitatus*, ought to acquaint the Deputy-Lieutenant of the County, and if they assist not, he must acquaint the King and Council; and yet, that the Sheriff shall be amerced, if he return that he cannot do Execution. *1 Keb. 99. Pl. 91.*

Sheriff amerced for the Bayliffs Faults. The Sheriff is to be amerced for the Faults of his own Bayliffs, for the Sheriff is the Officer to the Court, and not they. *Pract. Reg. 58.*

If upon a *Latitat* taken out of *B. R.* the Sheriff a-  
Sheriff doth return a *Cepi Corpus*, and the Par-  
ty arrested, upon this Process, doth not ap-  
pear at the Day of the Return, the Sheriff  
may be amerced by the Court; yet, if so,  
and the Party appear within a Week after the  
Day, he ought to have appear'd; the Amerce- Amercements  
ment may by Course of the Court be taken off.  
*Pract. Reg. 58.*

So likewise, if the Party appears at any *Simile*,  
Time before the Amercements estreated, the  
Court will discharge the Amercements upon  
payment of Costs. *Ibid. See after.*

But if the Sheriff be amerced by the Court Amercements  
for the not doing a Thing belonging to his increased.  
Office, and yet he continues to neglect to do  
it, contrary to the Rule of this Court, the  
Court may increase the Amercements upon  
him, until he perform his Duty therein.  
*Ibid.*

Yet it's said, That Amercements set upon Amercements  
the Sheriff, upon the Motion of the Party, respited, if  
if they be not estreated into the *Exchequer*, not estreated.  
may be respited, if the Party grieved, who  
caus'd him to be amerced, will consent thereto,  
otherwise it cannot be; for though the Amerce-  
ments be due to the King, yet they were set  
upon the Sheriff for an Injury done to the  
Party. *Id. 59.*

The Sheriff of *York* was amerced in *B. R.* for Sheriff a-  
not returning a Writ of *Habeas Corpus cum Causa*, merced for  
though he was commanded not to do it by *not returning* *Hab' Cor'*.  
the Bishop, then President there. *Ibid.*

A Sheriff, nor any other Officer, out of Sheriff, &c.  
his Office, cannot be amerced by the Court, out of Office  
for then he is not an Officer to the Court, not to be a-  
merced.  
*Ibid.*

Penalty for returning a Bill of Middlesex with a *Supersedeas* out of *Chancery*, because it was with an *Acetiam*, the Court conceiv'd the Return void, and gave him only Four Days to return his Writ, in Pain of 100*l.* and would not suffer him to take him by a new Writ. *Id. 59, & 60.*

Party arrested before Writ deliver'd to the Sheriff.

If a Sheriff make a Warrant to arrest a Man, and the Bayliff arrest him accordingly, and that before any Writ delivered to the Sheriff, it is said to be, without all Controversy, a Trespass, though a Writ be delivered afterwards. *1 Saund. 298, 299. & vide 2 Keb. 173, 838.*

Writ ante-dated.

Also, That an Arrest, before a Writ actually sued out, is not justifiable by Antedate. *3 Keb. 213. Pl. 21.*

Day of signing Writ to be set down and enter'd.

Note, That by a Statute of 9 & 10 W. 3. cap. 25. It is enacted, That every Officer or Clerk in the Courts of *Westminster* shall set down the Day and Year of his signing any Writ of Arrest upon such Writ, and duly enter the same, on Penalty of 10*l.*

Sheriff arrests in a Liberty, upon a *Non Omittas*.

If one be arrested by the Sheriff of the County within a Liberty without a *Non Omittas*, yet the Arrest is good, for the Sheriff is Sheriff of the whole County, but the Bayliff of the Liberty may have his Action against the Sheriff for entering of his Liberty; but upon a *Quo Minus*, out of the *Exchequer*, a Sheriff may enter any Liberty, and execute it *impune*. *Pract. Reg. 72.*

Simile, upon a *Quo minus.*  
Privilege of the Queen's Servants from Arrests.

Concerning arresting the Queen's Servants in Ordinary without Notice to the Lord Chamberlain, and the Party being punishable for his Contempt, though the Lord Chamberlain may not rescue the Prisoner, either by

Let-

Letter or Warrant, for no Man can know the Queen's Servant by his Face ; but he must shew his Privilege upon his Arrest : Yet it was allow'd, the Lord Chamberlain's Warrant may be to take up the Plaintiff that sued and detain'd, and not the Bayliffs, if they had no Notice before the Arrest, that he was the Queen's Servant. *2 Keb. 3.*

That the Queen's Servant is not so privileged from Arrests, but that the Sheriff ought to return his Writ, unless he sheweth his Privilege on the Arrest.

*Note.* It seems the Court of B. R. discharged one, being committed by the Queen's Consort's Vice-Chamberlain, to a Messenger of Hers, for arresting Her Servant ; and the Court held, such had no more Privilege than a Servant of Queen Dowager ; but only the Servants of the King or Queen Regent, and Parliament Men. *Vide 1 Keb. 842. Pl. 33.*

*See Raym. Rep. 152.* That the Queen's Servants are privileged from Arrests, for that the Queen may not be deprived of them without Leave ; but they may be Outlaw'd, for that is for the Advantage of the Queen. *Ibid.*

One that is not privileged from Arrest, by reason of his Attendance upon his Business in some Court of Justice, or some otherways privileged by some Special Rule or Order of Court, may be arrested in *Westminster-Hall.*

*Pract. Reg. 73.*

Also, it's said, That if a Man be arrested in the Face of the Court, the Court may discharge him, but not otherwise. *Raym. 101.*

Bayliffs, when  
excusable.

When the  
Sheriff must  
return his  
Writ.

One commit-  
ted by the  
Queen's Vice-  
Chamberlain,  
discharged by  
the Court.

Queen's Ser-  
vants may be  
Outlawed.

When and  
how one  
may be ar-  
rested in  
*Westminster-*  
*Hall.*

When the  
Court may  
discharge  
him.

Upon a Lye, or other Provocation, given in *Westminster-Hall*. But it is said, That upon an Affidavit of a Lye given to another in the Hall, the Court will bind him to his good Behaviour; So for any Provocation, which may induce any Quarrels or Striking. *I Keb. 558. Pl. 27.*

Where Clerks *B. R.* shall not be privileged.

Where privilege of going, &c. was not allow'd.

No Privilege against Privilege.

In what Case the Clerks in *B. R.* shall not have their Privilege allowed. *I Saund. 68, 69.*

In an Action upon the Case for an Escape, the Defendants pleaded the Privilege of going and returning from an Inferior Court against a Process in *Banco*, and seem'd to the Court an ill Plea. *Raym. 100.*

If one that is a Privileged Person in one Court, do sue another that is a Privileged Person in another Court, he that is sued shall not have his Privilege allowed him. *Pract. Reg. 100.*

*Here we will make some Observations concerning the Office of a Bayliff of a Manor.*

Diffined.

His Office.

These Bayliffs of a Manor or Household, (which in ancient Time seemeth to have been all one) is described by *Fleta*, *Lib. 2. cap. 72, 73. Co. Lit. 61. b. 168. b. Fitz Laborers. 61.*

They are chiefly Bayliffs of Husbandry, belonging to private Men of great Substance, because they dispose of the Under-Servants, every Man to his Labour and Task, check them for misdoing their Business, gather the Profits to their Lord and Master, and deliver an Account for the same at the Yeats end, or otherwise, as it shall be call'd for. See *Covel's Inter. Tit. Bayliff.*

This

This Officer seems to have near Affinity to Steward, a Steward of a Manor or Household: Who is also described in *Fleta.* Cap. 71, & 72.

It's said, If a Man take Cattle without any Who ad-  
Command, for Services due to the Lord, judged as  
if the Lord after agreed to the Taking, he <sup>Lord's Bay-</sup>  
shall be adjudged as a Bayliff, although he <sup>liff.</sup>  
was not his Bayliff in any Place before.

But if a Man takes Cattle, claiming Pro- Consent of  
perty to himself as an Heriot, if the Lord the Lord to  
agrees to the Taking, for Services to him due, his Distress.  
yet he cannot be said to be his Bayliff for this  
Time. *Vide 7 H. 4. 34, 35. & Godb. 110.*  
*Fitz Bayliff. 7. Bro. Tresp. 86. Distress. 83.*

A Man's acting for the King, makes him King's Bay-  
his Bayliff; for, by naked Matter of Fact, a liff.  
Man may as well be the Bayliff of the King,  
as of a common Person. *Kelw. 174. Fitz &*  
*Bro. ut supra.*

Also it's said, That a Clerk may be Bayliff Clerk.  
of a Manor. *4 H. 4. 2 b.*

### What Things he may do.

A Bayliff of a Manor may himself, or may Seizing  
command another, to take Cattle Damage Cattle.  
fesant upon the Land, for he hath the Care  
of all Things within the Manor. *Mic. 5. Fac.*  
*B. int' Tomlinson & Benson. 1 Rol. Abr. 339.*  
*C. Pl. 4.*

He may Lease a Piscary for Years. *3 H. 4. Making*  
*12. b.* But there is a Diversity between a Leafes.  
Lease for Years and a Lease at Will, for he  
may do all Things for the Benefit, but nothing  
for the Disadvantage, of his Lord. *Lit. Rep. 71.*  
*Fitz Bayliff. 6.*

Yet

But not of Freehold.

Yet a Bayliff by any Usage cannot make a Lease of his Master's Land of an Estate of Freehold. 19 *Aff.* 9. *Bro. Customs* 33. *Leases* 25.

Where he may Licence give Licence to go over the Land, because it to go over the is a Trespass to the Possession only, and the Land. Also it has been held, That a Bayliff may Bayliff hath the Disposal of the Profits of the Possession; but it was doubted. *Mich.* 13. *Jac. B.R. int. Winkfield & Bell. Vide 1 Rol. Rep.* 258. if it be upon a Consideration; but if not, by the better Opinion there, the Licence is void. Yet it being there pleaded *quod Licentiavit*, and found accordingly, it was said it should be intended. *Cro. Jac.* 337. Held as pleaded, it must be intended upon a Recompence.

Distaining for Amercements.

For what Things a Bayliff may do in general. *Vide 1 Rol. Rep.* 258. *Cro. Jac.* 377. *2 Leon.* 46. *Lit. Rep.* 70, 71. & *2 Lev.* 210. b Where it's said, A Bayliff of a Manor cannot distrain for Amercements without a Special Warrant from the Steward. *Cro. Eliz.* 698, 748. *2 Keb.* 745. *Pl. 55. Moor* 574. *Pl. 789. 607. Pl. 839. 3 Mod.* 138.

Where he cannot take an Amends tender'd.

If a Distress be taken for Damage *fasant*, it's said Amends cannot be tender'd to the Bayliff, for that he cannot deliver a Distress when it is once taken, no more than he can change the Avowry of his Master, or demand Rent upon a Condition of Re-entry. *5 Co. 76. int. Pilkington & Hastings. Cro. Eliz.* 813. *Co. Ent.* 602. *Pl. 17.* especially where the Master is present, and avows for Damage *fasant*, and the other makes Conusance as Bayliff, the Plaintiff may not Reply, and shew Tender to the Bayliff. *Vide 1 Brownl.* 173. *Hob.*

Hob. 154. 1 Rol. Abr. 316. Tit. *Avowry*, Pl. 1.

Cro. Eliz. 22.

In Debt for Rent, upon a Lease for Years, the Defendant pleaded, That the Plaintiff made J. S. Bayliff of his Manor, of which, the Lands in Lease were Part, and gave to him Power to receive the Rents of the Lessees, &c. and also Power to make Leases for Years; Whether he and that an Agreement was made between the said Bayliff and Defendant, That he should pay 100*l.* and also surrender his Lease to the Use of the Lord, and then should be discharged of the Rent, which he hath done: And whether this Agreement would bind the Lord, *dubitatur upon Demurrer.* *Paf. 1 Car. int. James & Owen, Palm. 402.* It's there said, a Peremptory Day was given to the Defendant to maintain his Plea, but he heard no more of it.

Where *A.* leased to *B.* for 99 Years, if *B. C.* or *D.* should so long live, reserving a Heriot, or 5*l.* upon the Death of every of them: *B.* dies, and the Bayliff of *A.* made Conusance, as Bayliff generally for a Heriot, but did not shew that *A.* had made his Election; and whether this was not good, and incident to the Place of a Bayliff, or at least, whether this should not be intended for the Benefit and Advantage of the Master, till the contrary was shewn, *dubitatur.* *Mich. 3. Car. int. Bear & Hedges. Lit. Rep. 33, 70, 71. & adjournatur;* and after the Parties agreed. *Vide Hest. 12, 16, 17. &c.*

*Conusance  
for an He-  
riot.*

If incident to  
his Place, 2.

How a Bayliff shall account, *vide Survey of the Law by Glisson and Gulston, and see General Abridgement, Tit. Account;* wherein is much Variety of Learning, and is a General Head in the Pleadings of the Law.

Vers'

*Vers' Sheriffs and their Officers, pro al' q'm Escapes.*

*A. brings B. as a Prisoner to an Inn, and desires C. the Host to keep him one Night, &c. and promises to save him harmless, &c.*

If *A.* brings *B.* to a common Inn, of which *C.* is Host, and affirms to *C.* that he hath arrested *B.* by Virtue of a Commission of Rebellion; and in Consideration that *C.* will keep *B.* as a Prisoner by the Space of one Night, assumes and promises to save *C.* harmless, &c. If *B.* recovers against *C.* in an Action of false Imprisonment, *C.* may have an Action against *A.* upon this Promise: For though the Consideration, *viz.* the keeping of *B.* was unlawful, yet because it did not appear to *C.* to be so, the Promise to save him harmless was good. *Mich. 20 Jac. int. Fletcher & Harcourt. Hut. 55. Winch. 48.*

*A. sues out a Fi' Fa' against B. and Goods are taken, and remain unfolded; yet A. sues out another Fi' Fa', and other Goods are taken, and Money levied, and paid unto A.*

If *A.* recovers against *B.* Damages and Costs in *C.* or *B.R.* and sues out a *Fieri Facias* to the Sheriff, who by Force thereof takes Goods of *B.* to the Value, and so returns it, and the Goods remain in his Hands *pro Defendo Emptor*; and after *A.* well knowing thereof, yet to the intent to vex and double-charge *B.* sues out another *Fieri Facias*, and delivers it to the same Sheriff to be executed, who thereupon levies the Money of other Goods of *B.* and pays it over to *A.* In this Case, for this Wrong and Vexation, though it was in a legal Way, an Action upon the Case lies. *Hob. Rep. 257, & 350. Cro. Eliz. 574. Cro. Jac. 667.*

*A. enters a Plaintiff against B. & scienter attaches the Goods of J.S.*

So if *A.* upon a Plaintiff enter'd against *B.* in London, scienter, attaches the Goods of *J.S.* an Action lies. *1 Syd. 183. 1 Keb. 693. 1 Lev. 129.* Adjudged though not said scienter, or that *A.* knew them to be the Goods of *J.S.*

*As*

As if a Sheriff upon the Goods of C. levies Debt due  
a Debt due from D. for he ought to take No. <sup>from D. le-</sup>  
tice at his Peril. *Hob. Fol. 205, 266.* *I Brownl.* <sup>vied upon the</sup>  
*12. Noy. 23.* <sup>Goods of C.</sup>

If a Sheriff returns upon an *Exigent* <sup>3</sup> or Sheriff re-  
<sup>4 exactus</sup>, and that there were no more Coun- turns no  
ties, when in Truth there were 5 Counties, <sup>more Coun-</sup>  
the Plaintiff may have an Action upon the ties, &c.  
Case against him. *9 H. 6. 60. b.*

If the Sheriff imbezils an *Exigent* delivered Sheriff imbezils an *Exi-*  
to him at my Suit, an Action on the Case lies, *gent, &c.*  
*tam pro me quam pro Dom' Rege.* *Adjudged 41*  
*Aff. 12. Fitz Bill. 14.* & *vide 19 H. 6. 71. b.*  
& *Stat. of Westm. 2. cap. 11. respondeat supe-*  
*rior, &c.* as if a Writ be substracted by the  
Sheriff's Deputy: But this, it's said, seems  
not to be Law, for the Deputy himself may  
be punished. *Vide 1 Leon. 146. Cro. Eliz. 175.*  
*1 Rol. Rep. 78.*

So it lies against him, though the Sheriff Though he  
delivered the Writ to one of the Coroners, delivered it  
and he was robb'd thereof by another of them, to one of the  
who was named in the *Exigent*, if he was be- Coroners, &c.  
fore in the Custody of the Sheriff, and he  
suffered him to go at large, for this was his  
own Folly. *41 Aff. 12. Fitz Bill. 14. Br. Act.*  
*sur le Case 121. Br. Barre 68.*

In a Real Action, if the Defendant delivers Where the  
a Writ of Summons to the Sheriff, and he Sheriff makes  
summons the Tenant accordingly, and after Summons in  
does not return the Writ, an Action upon a Real Action,  
the Case lies against him, *Hill. 32 Eliz. B. R.* and does not  
*1 Leon. 146. Cro. Eliz. 175.* rather than a- return the  
gainst the High Sheriff, who perhaps had no Writ.  
Notice thereof; and it may be the Under-  
Sheriff took the Fees.

*Vide*

*Vide 2 Inst. 452.* & quare if an Action lies, unless the Writ be delivered *in pleno Com'*, &c. according to the Act.

For not return-  
ing a Cap'  
Uitl.

*Vide Cro. Eliz. 873.* for not returning a Cap' Uitl.

Sheriff re-  
turns the Te-  
nant sum-  
moned,  
where he was  
not.

If the Sheriff returns the Tenant summoned in a Real Action, where he was not, by which he loses by Default, an Action lies against him for this, 26 Aff. 48. for the Judgment shall stand, and the Party is put to have his Remedy against the Sheriff. *Moor 349. Pl. 467.* *Gouls. 128. Fitz Bill. 13.*

Action lies  
against the  
Sheriff, tho'  
the Veyors  
be dead.

So an Action lies against the Sheriff, though the Summoners and Veyors are dead; for he is in this Action to recover all in Damages, and not the Land. *1 Hen. 6. 1. b. but quare & vide Fitz Action sur le Case. 1 Br. 73. 1 Rol. Abr. 105. Pl. 11.*

Sheriff upon  
*Ve' Fa'* re-  
turns one  
that hath no  
Issues, &c.

If a Sheriff upon a *Venire Facias* returns 12 Jurors, where one hath nothing upon which Issues may be levied, the Successor-Sheriff, when a *Distringas* issues to him, is bound by this Return; so that he can't return a *Nibil*, and therefore he may have a Writ of Deceit against his Predecessor-Sheriff, and shall recover Damages, having regard to what he loses by the Return of Issues that cannot be levied. *19 H. 6. 38. b. Br. Act. sur le Case, 53. Idem. Ret. del Brief 49. Fitz Ret. del Vicount 13.*

Where he  
will not ex-  
ecute an At-  
tachment of  
Goods.

If a Minister of Justice hath a Warrant to attach the Goods of another, and he can do it, and does it not, an Action lies against him. *Trin. 14 Jac. 3 Bul. 212. Vide Moor 432.*

Where the  
Party is  
shewn to the  
Sheriff.

So if I shew J. S. to the Sheriff, and give him a Writ to arrest him, and he does not. *Cro. Eliz. 873.*

But

But if upon a *Capias Utlagetum*, before Upon a Cap<sup>t</sup>  
Judgment, the Sheriff neglects to extend or Utl<sup>t</sup> before  
seize Goods, &c. this is the King's Loss, and Judgment,  
the Party shall have no Action, though it was Sheriff neg-  
objected, the Sheriff extending, &c. would lects to ex-  
have been a Means to force the Defendant to tend Goods.  
appear; but it was said, That if it had been shewn that the Sheriff might have taken his Body, &c. there would have been more Reason to support the Action, &c. 2 *Vent.* 90.

If a Distress at the Suit of A. issues out of J. S. no usual the Court of C. directed to J. S. (who is not Officer, exe-  
the usual Officer) to distrain the Cattle of B. cutes a Di-  
&c. or that B. should find Pledges to appear stress, and  
the next Court, and thereupon J. S. di- after re-deliv-  
strains the Cattle of B. and after re-delivers ers the Cat-  
them to B. without taking sufficient Security, ty strain'd.  
&c. and B. does not appear, an Action lies  
against J. S. for this Deceit, notwithstanding  
he is no known Officer, but *hac vice* only.  
*Adjudged int. Wild & Douze, Latch. 159. upon*  
*a Writ of Error.*

If upon a Writ de Coronatore elegend<sup>t</sup> the Upon a Writ Sheriff will not return him Coroner that is de Coronatore chosen by the major Part, an Action lies. elegend<sup>t</sup>.  
2 *Ven.* 26.

It's said, That no Under-Sheriff ought to No Under-  
be an Attorney, for it is often the Cause of en- Sheriff ought  
creasing Suits, and also a Hindrance in Dispatch to be an At-  
of Clients Causes, by Reason of his double torney.  
Capacity and Interest, and of his great Power  
he may have in the Country where he is such  
an Officer: That it is also against the Sta-  
tute. *Pratt. Reg. last pub. 12.*

## C H A P. VI.

## Pro Attorneys, Clerks, Solicitors, &amp;c.

*A.* assumes to convey a Manor to *B.* &c. *in cons'* that he had solicited divers Businesses for him.

**I**F *A.* in Consideration that *B.* at his Request, had solicited several Suits for him, and had done divers Businesses for him, assumes and promises to convey to him his Manor of *D.* or to give him as much as the Manor is worth: This is a good Consideration, though passed, because it was done at his Request. *Mich. 10 Car. B.* & *Mich. 22 Car. B.R. int. Leach & Bromsal, per Cur. in Cons'*, That before, at the Request of the Defendant, ille habuisset magnam Curiam de Negotiis Def' in Lege, & preservasset Def' a multis Periculis, &c. *Vide Rol. Abr. 13.*

Promise to pay a Lawyer, *in cons'* of Council given.

Promise upon Plaintiff's labouring to get a Pardon for Defendant.

A Serjeant at Law gives Council to *A.* and afterwards, in Consideration thereof, he assumes to pay him 20*l.* an Action lies thereupon. *2 Leon. III. Cro. Eliz. 59.*

If a Man requests another to labour for his Pardon, &c. and after he has done his Endeavour, if the other says, in Consideration that he has laboured for his Pardon at his own Charge, he promises to pay him so much, &c. this is held a good Consideration. *Moor 866. Pl. 1197. 2 Leon. 224. Hob. 105, 106. 1 Brownl. 8. Stiles 465. See the Manner of Declaring. Hob. 105, 106. Stiles 465. See Hern's Plead. 155. Robt Ent. 31, 74. Bro. Rediviv. 28.*

It is held a good Consideration, That the Plaintiff would procure the Consent of the Lessor, that the Lessee might assign his Term, &c. Adjudged, Huc. 39.

So far that he would do his Endeavour, and To endeavour to persuade the Plaintiff's Nephew to marry the Defendant's Niece. *Int. Anglionby & Tawerson, Raym. 400. after Verdict. Moor 595. Pl. 808.*

*ff.* The Defendant published the felonious taking of several Goods; and in Consideration that the Plaintiff, or other Person, would give Notice of the Goods, so that they might be restored, promised to pay such Person as should give Notice 20*l.* and that the Plaintiff gave Notice. *Bro. Met. novissima 6.*

*ff.* In Consideration that the Plaintiff would procure his Wife to levy a Fine for the better Assurance of Land, the Defendant promised to give her 10*l.* *Rob. Ent. 6. Vide 1 Bul. 122.*

*Noy. 19.*

If the Consideration of a Promise to the Attorney of the Plaintiff be, That in an Action after Judgment, when his Warrant is determined, he shall acknowledge Satisfaction of the Judgment: This is not sufficient to maintain an Action upon the Case, because it is against Law for him to acknowledge Satisfaction after the Warrant determined, without the Consent of the Plaintiff himself. *Rol. Rep. 14 Jac. int. Payn & Chut. 1 Rol. Rep. 365.*

*Stiles Rep. 426.* his Warrant is not determined by the Judgment. *Vide 1 Rol. Abr. 291. Pl. 4, 5.* See after, concerning the Authority of Attorneys by Warrant, &c.

Promise for  
Money to  
serve Process.

If a Man, for Money given, promises to serve certain Processes ; this is no good Consideration, because 'tis against Law, for it is Extortion. *Rol. Rep. 13 Fac. 1 Rol. Rep. 365. dubitatur. Id. 313. adjudged.*

Upon a Re-  
quest to so-  
licite a Suit,  
&c.

In an Action upon the Case, the Plaintiff declared, That whereas he had been requested by the Defendant to solicit and prosecute a Suit in B. R. in Trespass, in which the Defendant was Plaintiff against B. the Defendant promised to pay the now Plaintiff 100*l.* This is said to be a good Consideration, and not against Law ; for 'tis lawful for a Man to be a Solicitor upon a Special Retainer, so that it be not for Maintenance. *Hub. Rep. 93. Hob. 67. Cro. Eliz. 760. Owen 123.*

May solicit  
upon a Spe-  
cial Retainer.

If A. promises B. an Attorney *de B<sup>o</sup>.* That in Consideration that he will solicit a Suit that J. S. has in *Chancery*, that he will give him 3*s.* 4*d.* every Term : This Consideration is said to be good, and not against Law ; for an Attorney of one Court may be a particular Solicitor in another Court, but not a general one. *Mich. 12. Fac. B. int. Leach & Penton. Cro. Car. 159. Jones 208. March. 78. Vide Moor 656. Pl. 899. Per Egerton Lord Keeper, con.*

Upon a Pro-  
mise to an  
Attorney not  
to sue Exe-  
cution.  
Good.

If A. enters into a Recognizance to B. and B. employs C. an Attorney, to sue Execution thereupon, upon which A. in Consideration that C. will forbear to prosecute him thereupon, promises, &c. the Consideration, it's said, is good ; for it shall be intended he had Authority from his Client to proceed or not, as he thought requisite. *Trin. 18 Car. 2. int. Russell & Haddock. 1 Syd. 294. 2 Keb. 75.* But in 1 Lev. 188. the Report of this Case differs much from the other Books ; for it's said, the Plain-

Plaintiff declared, Whereas *J. S.* had recovered a Judgment against the Defendant, and *J. S.* had made a Letter of Attorney to the Plaintiff, to recover and receive it to his own Use, &c.

If *A.* sues a Writ of Privilege against *B.* In Cons<sup>t</sup> the Plaintiff and *B.* in Consideration that *A.* will, at the Request of *B.* forbear further to prosecute the said Writ, promises *s o l.* to *A.* this is said to be a good Promise, though it be not averred that the Plaintiff had any good Cause of Action; for the Promise implies a Cause, in as much as *B.* desired a Stay: This also requires a Loss of the Writ, and a Delay of the Suit. *Hob. Rep. c. 278. Vide Hob. fo. 216.*

So if the Plaintiff declares, That whereas he was about to sue the Defendant, the Defendant, in Consideration he would forbear, &c. assumed, &c. *Raym. 203, 204. Aliter,* where it appeared the Plaintiff was not entitled to any Relief in *Canc.* *2 Leon. 105. Cro. Eliz. 206.*

If *A.* appoints *B.* an Attorney, to sue out a *J.M.* promises *Latitat* against *J. S.* at his Suit, for a Debt due to *B.* Attorney of *A.* to him by *J. S.* and to arrest him, and *B.* accordingly takes out a *Latitat*, and shews it to *J. S.* and his Intent to arrest him thereupon; upon which *J. M.* promises *B.* that if he will forbear to arrest *J. S.* he will pay the Debt at a certain Time to *A.* upon which *B.* forbears to arrest him; and after *A.* agrees thereto, and brings an Action upon the Case against *J. M.* upon this Promise, and it seems it will lie, though the Attorney had no Authority to take this Promise before it was made, for the Agreement thereto after is sufficient. *Sav. 23. Cro. Eliz. 229. Godb. 361.* And a Man may

How he may declare, upon a Promise to himself, or his Attorney. *Latcb.* 206. 'tis good either Way; but *Cro. Eliz.* 369. *vide con. sed vide Raym.* 303. *1 Rol. Rep.* 367. *1 Lev.* 98.

In Cons' he would solici-  
cite, & finem imponeret.

Defendant countermanded him before he could make an End.

If Counter-  
mand be after  
Part done,  
Action may  
be for the  
Whole.

Jury ought to give as much as the Business done deserves.

Upon a Pro-  
mise to an  
Attorney,  
That he  
would ac-  
knowledge  
Satisfaction.

If in an *Affumpſit* the Plaintiff declares, That in Consideration the Plaintiff would solicit a Busines for the Defendant, which he had with *J. S. & Finem adinde poneret*, the Defendant did assume, &c. and that he had solicited and employed much Care and Pains, &c. but before he could *Finem inde imponere*, the Defendant countermanded him; the Action lies. *Paf. 1 Fac. 2. int. How & Beech.* *3 Lev.* 244. Adjudged upon a Writ of Error in *Camer' Scaccar'*, and the first Judgment affirmed accordingly.

And though it was objected, That such Employment is always countermandable, and if the Plaintiff had bestowed Pains, and in Part done the Thing before the Countermand, he might have had a *quantum meruit* for what he had done, but not an *Affumpſit* for the Whole: Yet it was resolved by the Court, That if after Part done, the Defendant countermands it, the Plaintiff shall have an Action for the Whole; and upon the Trial, the Jury ought to give as much in Damages as the Business done deserves. *Vide Gen. Abr.* 67.

Upon an *Affumpſit* to the Attorney, in Consideration that he would acknowledge Satisfaction, &c. and he declares and avers, That he did acknowledge Satisfaction *tanquam Attornatus pred'*, &c. and held naught, for perhaps before

before the Conuance, his Warrant was re-vok'd. 1 Rol. Rep. 366. per Cur.

*For Words spoken of Attorneys, &c.*

One said of an Attorney, Thou art a Knave Thou art a upon Record; a Forging Knave, *Latch* 21. Knave upon no Judgment, because the Parties agreed: *Sed vide* 1 Rol. Abr. Pl. 29. *in Margine*, like Case.

Thou art a Forging Knave, if spoke of an A Forging Attorney, actionable, *alit' non.* 1 Brownl. 16. Knave, Goul. 125. *Vide Yelv.* 146. & 1 Rol. Abr. 76. Pl. 3.

Thou hast made false Writings, not actionable, though spoke of an Attorney, for 'tis not his Business to make Writings. *Winch.* 39, 40. And said to be no Scandal to him in his Profession. *Vide* 3 Leon. 231. *sed vide Cro. Eliz.* 296. *per Cur. con.*

A. being arrested by Vertue of a Warrant upon a *Laritar*, said, This is a Counterfeit Warrant made by Mr. S. who was an Attorney; actionable. *Cro. Jac.* 648.

If the Plaintiff declares, *quod cum diversis Annis jam elaps' extiterit Attornatus, &c.* the Defendant maliciously spoke these Words of him, *viz.* He is a Forging Knave: This is no good Declaration, because it does not appear he was an Attorney at the Time when the Words were spoken; and it ought to have been *jam ultimo elapsos.* *Adjudged in Error int. Moor & Sinne, Pajcb.* 17 *Jac.* *Vide 2 Rol. Rep.* 84.

*Ambodexter.*

But 'tis otherwise, where the Words themselves import a Continuance of the Profession, as if he call'd him *Ambodexter, &c.* 2 Rol. Rep. 85. Brownl. 1. Cro. Car. 135, 136. Palm. 525, 526. 1 Jones 194.

*Pro Attorn' sur Parols, &c.*

In an Action upon the Case, if the Plaintiff declares, That whereas he was an Attorney *de B<sup>n</sup>.* for several Years before ; and whereas he was retain'd such a Day by one *H.* to prosecute a Suit for him against *J. S.* in *B.* the Defendant, *Premissor non ignarus,* yet of his Malice to slander him, having a Discourse with the said *H.* about the Plaintiff, said these Words of the Plaintiff, [You may be ashamed to employ that Knave, (naming him) for you will receive Disgrace and Shame by it, for he is a Knave, and a proclaimed Knave in open Market; by which he lost several Clients, &c.] An Action lies for these Words ; for upon the whole Matter it appears, That this is spoke of him in his Profession of an Attorney, inasmuch as 'tis alledged, That the Defendant was not ignorant of the Employment of the Plaintiff by the said *H.* and the Words that he should not employ him, &c. *Paf.* 12. *Car.* *B. R. int. Nicholls & Webb.* *Cro. Car.* 459.

You may be  
ashamed to  
employ that  
Knave, &c.

Actionable  
upon the  
whole Dis-  
course.

He will make  
you throw  
your Purse  
over your Bo-  
som.

One said, Is *N.* your Attorney ? Take Heed and follow him well, or else he will make you throw your Purse over your Bosom : Held actionable ; for it shall be taken to be as much as if he had said, he would make him spend all his Money, so a Scandal to his Profession. *Winch.* 41.

## Ch. 6. LAWYER, &c.

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If *A.* having Discourse of *B.* an Attorney, and of his Office of an Attorney, says before the Clients of *B.* That *B.* is a base Rogue and Knavery, and maintains his Wife and Children by his Knavery and cheating Tricks: An Action lies for these Words. *Mich. 14 Car. B. R. int. Shaw & Wakeman.*

He is the falsest Knavery in *England*, and will cut my Throat, &c. Actionable, being spoke of an Attorney. *Dal. 63. Het. 140.*

Thou hast cozened Mr. *W.* of his Fee, and I will sue thee in the *Star-Chamber*, for that thou didst not come for Mr. *W.* Actionable. *1 Brownl. 3. 2 Rol. Rep. 73.* cited, and there said the Plaintiff was an Attorney, and *W.* an Officer of the Court. *Cro. Car. 515.*

In an Action upon the Case, the Plaintiff declared, That he was an Attorney *de B. R.* and a Filazer there, and retained to solicit Causes in the *Exchequer, C. B. and Spiritual Court*, for one *Jones*, and was to receive 15*l.* of him for the Prosecution thereof; and that the Defendant having a Discourse of the Plaintiff, and of the said 15*l.* and of the said Suits, said of the Plaintiff, He is a cozening cheating Knavery; and Mr. *Jones* hath left with me 15*l.* but I will not deliver it him, but will see the Laying of it out, for he is a cozening Knavery: And adjudged, That an Action lies for these Words, for this disgraces him in his Profession; for it is lawful for an Attorney to prosecute Suits in other Courts as a Solicitor, being retained so to do. *Trin. 16 Car. B. R. int. Eveleigh & Parker.*

He is the  
falsest Knavery,  
&c.

Thou hast  
cozened  
Mr. *W.* of his  
Fee, &c.

He is a co-  
zening cheat-  
ing Knavery,  
&c.

Disgraces in  
Profession.

He's a Knave, He is a Knave and a Rascal, and deals falsely in his Place ; being spoke of an Attorney, and of his Office, upon a *Colloquium* thereof. *Hern's Pleader* 127.

Thou art a  
false Knave,  
&c.

Thou art a false Knave, and a cozening Knave, and hast gotten all thou hast by Cozenage, and thou hast cozened all that have dealt with thee. Adjudged actionable, *Cro. Jac.* §86. the Words being spoken of an Attorney.

You are a  
shirking At-  
torney, &c.

If *A.* says of an Attorney, having a Discourse with him concerning 20*s.* due to *J. S.* in full Discharge of a Judgment obtained by the said *J. S.* against the said *A.* in Trespass, You are a shirking Attorney : And at another Time says of him, He is a cheating Attorney, and he may be thrown over the Bar ; an Action will lie. *Hill.* 18 *Car. int.* *Bird & Woodcock.*

Your At-  
torney is a bri-  
bing Knave,  
&c.

If *A.* has a Discourse with *B.* touching *C.* an Attorney, who before was retain'd by *B.* to be his Attorney, and *A.* says to *B.* Your Attorney (*innendo* the said *C.*) is a bribing Knave, and hath taken 20*l.* of you to cozen me : These general Words, it's said, will maintain an Action, and the last Words do not extenuate them ; for if any Man has any Intermeddling in Case of Justice, be he Judge, Officer, or Attorney, if he receives any undue Reward for any thing against Justice, this is a Bribe. *Hab. Rep.* 13. *int.* *Yardly & Ellis.* *Vide* 1 *Rol. Abr.* 54. *Pl.* 13, 56. *Pl.* 25. *Vide* *Hob. Fo.* 7. *Moor* 855. *Pl.* 1173. 1 *Brownl.* 6. *Winch.* 39. &c.

Receiving  
undue Re-  
ward is a  
Bribe.

If a Man says of an Attorney, Thou art a common Maintainer of Suits, and a Champertor, and I will have thee thrown over the Bar next Term: An Action lies for these Words, Thou art a Champertor, for this is against his Office, and the Statute; but no Action lies for the other Words, Thou art a Maintainer of Suits, for this is lawful for him to do, and justifiable; and the other Words of throwing over the Bar, are of an uncertain Sense. *Hob. Rep. 163. int. Box & Barnaby. Moor 867. Pl. 1200. 1 Brownl. 15.*  
*Vide postea.*

He is a common Stirrer up of Suits, and a Disturber of the Peace, and so a Mover of unjust Actions; being spoke of an Attorney, held actionable. *Hel. 140.*

He sets People together by the Ears, and Sets People we shall have him indicted for a common Bar- by the Ears, retror; adjudged actionable. *Cro. Car. 214.*

If a Man says of an Attorney, He is an Extortioner; and one J. S. told me, That he had cozened him in a Bill of Costs of 10*l.* an Action lies for these Words; for it is against the Oath of an Attorney to commit a Falsity. *Hill. 40 Eliz. int. Stanley & Boswell. Cro. Eliz. 602. 1 Rol. Abr. 53. Pl. 7, 55. Pl. 23.*

If one says to an Attorney, You are a Knave; You were an Attorney for my Mother against my Husband, and set her on to sue him, and made him spend 1000*l.* and such a Knave as you are, hath made my Husband spend almost all his Estate: These Words are actionable, for this disgraces him in his Office of an Attorney. *Paf. 13 Car. B. R. int. Hilton & Playters,* and adjudged in Error.

A Man

He keepeth  
many Mar-  
kets, and  
stirreth up  
Men to Suits,  
*&c.*

Actionable.

Thou art a  
common Bar-  
retor, a *Judas*,  
and Promoter,  
*&c.*

He will play  
on both  
Sides, *&c.*

A Man said of an Attorney, He keepeth many Markets, and stirreth up Men to Suits, and promiseth, If he doth not recover in their Cause, he will take no Charges ; and he once promised me, That if he did not recover in a Cause for me, he would take no Charges of me : Yet afterwards he prosecuted a Suit, and obtained Judgment, and got Charges of me for that Cause, and that I can prove. Now there are such Articles against him, That if he were worth 3000*l.* he would not be left worth one Groat. These Words, it's said, are actionable, because for an Attorney to stir up Men to Suits is not lawful, but is a Badge of a Barretor ; and to contract beforehand, not to take Charges if he does not recover, is a Badge of Maintenance, and not lawful. *Mich. 1649. int. Smith & Andrews,* adjudged.

A Man said to an Attorney, Thou art a common Barretor, a *Judas*, and a Promoter ; an Action lies for these Words ; for to be a common Barretor, is a great Disgrace to an Attorney. *Adjudged int. Starky & Taylor, Trin. 6 Car. B. R.* And affirmed in Error, *Cro. Car. 192. H ut. 104, 139, 143.* But not so if spoken to another Man. *Vide 1 Rol. Abr. 44. Pl. 7. 59. Hob. 140. Moor 180. Pl. 320.*

To say, You have play'd the *Judas* with your Clients ; held actionable. *Hetl. 141. per Cur.*

One said, *B.* is a good Attorney ; but that he will play on both Sides ; and held actionable. *1 Brownl. 5.*

So to say, He is a Paltry Fellow, for he deals on both Sides, and deceives them which put him in Trust: Held actionable, being spoke of an Attorney. *Noy. 11, 98. Telv. 32.*

But if a Man says to an Attorney, That he is a common Maintainer of Suits; no Action lies, because 'tis no Discredit, for 'tis his Profession to maintain Suits. *Hill. 14 Jac. B. Vide mon Main- tainer of Suits.*

*1 Rol. Abr. 53. Pl. 6. Vide ante.*

A Man said to an Attorney, Thou sayest I will have thou art an Attorney, but I think thou art but an Attorney's Clerk; and if thou be, I will have thee pitch'd over the Bar next Term: No Action, 'tis said, will lie for these Words, because it is uncertain whether he intends that he himself will pitch him over, or the Court. *Pascb. 7 Jac. B. Tootman's Case. Dal. 97. 1 Rol. Abr. 53. Pl. 6. 2 Browl. 253.*

One said, Is *J. S.* your Attorney? No ho. He was nester Attorney than he? He was pitch'd pitch'd over over the Bar at *Westminster* for his Knavery. *the Bar, &c. Hern's Pleader 137, 138.*

If a Man says to an Attorney, That he is a common Champerter; these Words are actionable, for this is to have Part of the perter, &c. Thing in Demand pending the Writ, which is not lawful for an Attorney to do, and so is a Disgrace to his Profession. *Hill. 14 Jac. B.*

*1 Rol. Abr. 53. Pl. 6.*

A Man said of an Attorney, That he had the Falling-Sickness; and held actionable, be- cause this disables him in his Profession; for by Reason thereof he cannot follow the Duty Actionable, of his Profession. *Int. Taylor & Perr's Case, Hill. 4 Jac. Vide 1 Rol. Abr. 44. Pl. 4, 5. Noy.*

117,

You are well known to be a corrupt Man, &c.

He is the foolishest and simplest Attorney towards the Law, &c.

Go tell your Lawyer D. that I say he is a base Rascal, and I will make him lose his Ears, &c.

Good Behaviour.

One said of an Attorney, having a Discourse of his Dealing in his Profession, You are well known to be a corrupt Man, and to deal corruptly; and held actionable, for these Words affect him in his Oath, and the Duty of his Profession. *Mich. 27 & 28 Eliz. Birchley's Case. 4 Co. 16.* & New Co. Rep. in Margin. Said, That 'twas adjudged upon the Rule, *Quod Sermo relat' ad personam, intelligi debet de Conditione Personæ.* *Vide Gen. Abr. 117.*

One said of *M.* being an Attorney, Is *M.* your Attorney? He is the foolishest and simplest Attorney towards the Law; and if he doth not overthrow the Cause, I will give you my Ears: He is a Fool and an Ass: And held actionable; for the saying, he will overthrow his Clients Cause, touches him in his Profession. *Adjudged int. Martin & Burlins, Cro. Eliz. 589.* *Vide Gouldb. 128.*

*A.* having a Discourse with *B.* concerning *D.* his Attorney, and of his Honesty in his Profession, and of a *Latitat* before that Time by *D.* for *B.* against *A.* taken out, by Virtue of which *A.* was arrested, and says to *B.* Go tell your Lawyer *D.* That I say he is a base Rascal, and I will make him lose his Ears; and I will teach him, or any Lawyer of them all, to have a Writ serv'd on me. Adjudged actionable, *int. Roberts & Lord, Trin. 3 Car. Vide Ley. 70.* And there said, That 'twas the Opinion of the Court, That the Defendant ought to be bound to his good Behaviour; but upon the Importance of his Council, it was remitted. *Vide Latchb. 220. Towbridge & Hard.* And said, the Defendant was bound to his good Behaviour. *Vide 1 Ventr. 117. 1 Lev. 53.*

He

He deserves to have his Ears nail'd to the Pillory, spoken of an Attorney, held actionable. *Moor 401. Pl. 529.*

He deserves to have his Ears nail'd to the Pillory.

The Plaintiff declared, That he was an Attorney *de C. B.* and that upon a Discourse of the Plaintiff's Profession, the Defendant said to him, Thou canst not read a Declaration ; by Reason whereof he lost *A. B.* and *C.* his former Clients : An Action will lie. *Adjudged int. Jones & Powel, Mich. 22 Car. 2. Vide Raym. 196.* adjudged and affirmed in Error.

Thou canst not read a Declaration.

*Vide 1 Mod. 272.* same Case adjudged, and said per Cur' the Action would have lain, though there had been no Special Damage : And *1 Vent. 98.* same Case ; and there said, the Court inclined for the Defendant ; and that the Allegation of Special Damage is immaterial, unless the Words import Slander, which these do not, (unless brought in upon a Discourse of his Knowledge in his Profession) for perhaps it was so ill writ, it could not be read ; but no Judgment appears there to have been given. *Vide 1 Lev. 297.* same Case adjudged, a *Colloquium* being laid of the Plaintiff, and his Profession.

The Plaintiff declared, That he was Town- Clerk to the Mayor, &c. of *D.* and Steward of their Courts : That the Defendant said of him, He hath taken 40 s. for a Bribe : Adjudged actionable ; and it must necessarily be intended to be spoken of him, in Relation to his Office, in which Capacity he was capable of taking of a Bribe. *Adjudged, Mich. 6 Jac. int.*

Of a Town-Clerk, He hath taken 40 s. for a Bribe.

*int. Nile & Swanson. Telv. 142. Godb. 157. Vide  
Palm. 53.*

Diversity  
where.

But there is a Diversity, where spoken to an Officer of Record, and where to an Officer of a base Court. *Dal. 45. Moor 182. Pl. 324.*

*Con' Attorneys, Clerks, Solicitors, &c.*

Against an Attorney, who promised the Defendant, That if he would order his Attorney to confess Judgment, Judgment should not be entred till, &c.

*A.* brought Debt against *B.* and *C.* an Attorney, in Behalf of *A.* his Master, delivered a Declaration thereupon; and in Consideration that *B.* would order his Attorney to confess Judgment, *C.* assument and promised to *B.* That the said Judgment should not be entred till *Cras' Ascension'*, and that Execution should not be taken out till *Michaelmas Term* then next, &c. And though it was objected, That it was impossible for *C.* to prevent the Entry of the Judgment, which was in the Discretion of the Court, yet adjudged for the Plaintiff, upon a Motion in Arrest of Judgment after Verdict. *Mich. 20 Fac. int. Bawtry & Scarlet. Hut. 63. Gen. Abr. 60.*

Action upon a false Sure-mise in a proper Court.

If a Man brings an Action upon a false Sure-mise in a proper Court, no Action lies for it; for the Suit was legal, though the Cause thereof was untrue, for which he shall pay Costs. *Hob. Rep. 350. Noy. 102. 3 Leon. 138, 163. Q.*

Suing an Attorney in an Inferior Court.

No Action lies for suing an Attorney in an Inferior Court; for who knows whether he will insist on his Privilege, and if he does, he may plead it. *1 Mod. 209, 210. per Cur.*

Deceit in filing a Writ.

If an Attorney, by Deceit between him and the Sheriff, puts a Writ of Seisin upon the File of the Sheriff's Writs, by which I am ousted of the Possession of the Land, supposing a Judgment against me, where there was not

not any : A Writ of Deceit lies against the Attorney. 17 Ed. 3. 51. b. *Fitz Disceit* 39.

If my Attorney makes Default in a Plea of Attorney Land, by which I lose the Land, I may have makes De- fault, where- a Writ of Deceit against him, and shall reco- by I lose my ver all in Damages. 21 Ed. 3. 45. b. 61. b. Land. But yet it's made a *Quare*, if he did not lose it by Collusion.

An Action lies against an Attorney for suf- Having War- fering Judgment against his Client, by *Nil di- rant to plead,* cit, whereas he had given him a Warrant to *but suffers* plead the General Issue ; but it must be laid *Judgment.* to have been done by Covin. *Vide Winch.*  
*Rep.* 90.

It's said, That if a Tenant makes an Atto- In B<sup>o</sup>. Conu- ney in Bank, and afterwards Conuance of lance of Plea this Plea is demanded by a Franchise, and granted. granted, he continues Attorney for him in the Franchise ; yet if he makes Default there, And Attor- by which the Land is lost, no Writ of Deceit ney makes lies against him, because he is not bound to Default. go there. 21 Ed. 3. 46.

So an Attorney in a Plea is not bound to go Makes De- to the *Nisi Prius* ; and therefore if he makes fault at the Default at the *Nisi Prius*, no Writ of Deceit *Nisi Prius*. lies against him. *Ibid.*

If an Attorney, by Collusion with J. S. Appears by and without any Warrant from me, appears Collusion, for me in an Action of Trespass at the Suit of J. S. and suffers the Inquest to pass against me by Default, whereupon J. S. recovers a- gainst me, I may have a Writ of Deceit a- gainst the Attorney. *Fitz Nat. Br.* 96. E. *Vide Cro. Fac.* 695. *Dyer* 362. 1 *Keb.* 89. But 'tis said, perhaps the Judgment shall not be vacated. *Cro. Fac.* 344, 695. 3 *Inst.* 122. 2 *Rol. Abr.* 724. *Vide Gen. Abridg.* 185, 186.

If

Suing one in  
the Name of  
another,  
without his  
Consent.

*Queritur* in  
C. B. against  
an Attorney,  
ill.

Where the  
Attorney  
was knowing  
of a Release.

Where the  
Attorney en-  
ters Judg-  
ment before  
the Rules are  
out, &c.

If any Attorney, &c. or other Person, sues an Action of Debt against me, in the Name of J. S. without the Will of J. S. I may have a good Action upon the Case against him for this Vexation. 7 H. 6. 43. Marsh 47. Cro. Eliz. 629. Br. *Att. sur le Cas* 49. Br. *Desceit* 15. Or I may have Remedy upon the 8th of Eliz. Cap. 2. But *Quære* where there are several Plaintiffs, and one of them gives his Consent. Cro. Eliz. 236. 2 Syd. 162, 163.

*ff.* An Action was brought in C. B. by an Administrator Infant, by his next Friend, against an Attorney, who demurred to the Declaration; and Judgment was given for the Defendant, for that it was by Way of *queritur*, whereas all Actions in C. B. are brought by Original Writ or Original Bill, or Attachment of Privilege. 1 Lut. 227.

*ff.* If an Attorney, in an Action of Debt, knows of, and was a Witness to, a Release of the Debt made before the Action brought for it, yet no Action lies against the Attorney, for he acted only as a Servant, and in the Way of his Calling. 1 Mod. 209. *per Cur.*

*A.* brings an Action against *B.* in which *C.* is Attorney for *A.* and after Verdict for *A.* *C.* enters Judgment before the Rules (according to the Course of the Court) are out; whereby *B.* is prevented from moving in Arrest of Judgment: And whether *B.* may have an Action against *C.* *dubitatur.* Mich. 22 Car. 2. int. Goodman & Banks. Raym 194. And Twisden thought it hard the Attorney should be sued after the Judgment is set aside; but that it does not appear in the Case otherwise than from what he said, That the Judgment was set aside before the Action brought. *Vide* 2 Keb.

688. Same Case adjourned, it appearing the Judgment was set aside before *B.* brought his Action. 716. *adjournatur.*

*Vide Huc.* 125, 126. an Action brought a- For entring against the Plaintiff's Attorney, for entring Judgment instead of a Judgment against the Defendant, when the Court awarded a *Non pros'*; and yet it appears the Judgment was set aside before the Action brought.

*Note:* By Statute 21 *Jac. Chap. 26.* it is Felony by made Felony without Benefit of Clergy, Stat' 21 *Jac.* 26. to acknowledge, or procure to be acknowledged, any Fine, Recovery, Deed inroll'd, Statute, Recognizance, Bail, or Judgment, in the Name of any Person not privy or consenting thereunto; howbeit this Offence shall not corrupt the Blood, nor take away Dower; neither shall it extend to Judgment, acknowledged by an Attorney of Record for another Person.

Yet if an Attorney without Warrant appears, this is a good Appearance as to the without Court, and the Attorney only liable to an Warrant, &c. Action; and so if such an Attorney mend an immaterial Point, contrary to the Rule of Court, that is remediless, though a Contempt punishable by the Court. 1 *Keb.* 89. *Pl.* 65. *Godb.* 74. *Pract. Reg. last pub.* 20, 21.

But if an Attorney doth practice deceit- Attachment fully in *B. R.* an Attachment lies against him for deceitful out of the Court, at the Prayer of the Party Practice. grieved, if he makes it appear so to the Court. 22 *Car. B. R.* For the Court hath Authority to remove all Obstructions that may hinder the

Commit-  
ment of an  
Attorney.

Attorney put  
out of the  
Roll.

*Simile*, for  
arresting a  
Party after  
lawfully deli-  
vered.

No Privilege  
in an Action  
by Attorney  
and his Wife.

No forcing  
an Attorney  
to Special  
Bail.

equal Proceedings in Law, and to punish the Obstructors, and to right the Party injured thereby. *See Styles Rep.* 426.

An Attorney and his Clerk were both committed by the Court, for entring Things against the express Rules of the Court, after Notice of those Rules given them by the Attorney on the other Side. *See Pract. Reg. last pub. Pag. 10.*

One G. H. an Attorney, was ordered to be put out of the Roll of Attorneys, for entring a Judgment against an express Rule of Court. *Pract. Reg. 12.*

If a Defendant shall be lawfully delivered from an Arrest upon any Process, the said Defendant shall not be again arrested at the same time, by Vertue of another Process, at the Suit of the said Plaintiff; and if any Attorney or Plaintiff in the said Process named, offends in the Premisses, the Name of every Attorney so offending, shall be put out of the Roll, and as well the Attorney, as the Plaintiff in the said Process named, shall be respectively punished as the Court shall think fit. *Per Cur. Id. 22.*

An Attorney, it's said, shall not have his Privilege in an Action brought by himself and his Wife, because his Privilege is allowed him by the Court, for the Recovery of his Fees: Nor on a Foreign Attachment of Goods in his own Hands for others Debts. *Id. 23. & 2 Keb. 346. Pl. 24.*

The Plaintiff pray'd Special Bail against the Defendant, who was an Attorney of the Court, shewing Bonds of 500*l.* and a great Debt on Account: But, *per Cur'*, being an Attorney, they cannot force it, being contra-

ry

ry to his Privilege, though but an Attorney at large. 2 Keb. 435. Pl. 78. But see after, if he gives a Bail Bond.

An Attorney of B. R. may well bring an Action for his Fees for soliciting in Chancery; Fees. and it will well lie. Pract. Reg. 24.

It will be a good Bar to an Action brought by an Attorney for his Fees, That he did not give the Defendant any Bill of Charges, according to the Statute, 3 Jac. I. Chap. 7. Vide Raym. 245. So 3 Keb. 118. Pl. 32. But 'tis but a Temporary Bar, the Debt being confessed; and on a new Delivery of a Bill, Fees must be paid *per Cur'*. And there further said, he need not shew in what Court the Charges were laid out. But *contra* of a Solicitor. Vide Keb. 514. Pl. 71.

If an Attorney, Solicitor, or Counsellor, Attorney, gets Writings into his Hands, upon Account &c. detaining Writings of any Suit or Cause depending, and refuses to redeliver them, there being no Fees due to him, the Court, upon Motion, will compel a Redelivery of them, without forcing the Party to an Action for such his Writings; but if there be Fees due to him, the Court will not force the Delivery of them until the Fees to be taxed by the Master of the Office be paid; and the Court held it most consonable: And that the Clerks of the Court of B. R. are to be regulated in all Things by the Court: And they Money re-ordered 40*l.* out of 80*l.* to be returned to turn'd by an one S. within a Week, his Son dying within Attorney, Three Years of the Five: And said, in Case tipon his of Default, they would imprison him, and put Clerk's Death: him out of the Roll. P. Reg. 24, 25. & 2 Keb. 318. Pl. 31. But it seems to be otherwise when the Articles express the contrary.

Where the Plaintiff repeals his Warrant to appear.

Where Defendant may appear in Person.

Appearance doth not admit the Writ.

Principal may not give a Warrant for his Surety.

Attorney promises to appear, and fails.

If one do give an Attorney a Warrant to appear for him in B. R. and shall afterwards repeal this Warrant, on purpose to delay his Appearance, the Court of B. R. will, notwithstanding the repealing of his Warrant, compel his Attorney to appear for him, in such a Manner as by the Rules of the Court he ought to have appeared, if his Warrant had not been repealed. *Pract. Reg.* 75.

Yet in all Cases where Proces may issue forth to take the Defendant's Body, where an Appearance only, and not Bail, is required, there every such Person may appear in Court of B. R. in his proper Person, and file his common Bail. *Ibid.*

But if one doth appear in Court upon the Return of a Writ issued forth against him; yet he doth not admit the Writ to be good by such his Appearance; for he cannot have Oyer, or a Hearing of the Writ, until the Party hath declared against him. *Ibid.*

The Principal cannot give a Warrant of Attorney to an Attorney to appear for his Surety in B. R. though this was formerly usually done in the *Common Pleas*. *Ibid.*

*See after, for Letters and Warrants of Attorney, both General and Special, Chap. 7.*

If an Attorney promises to appear for his Client, and afterwards refuses, the Court will compel him, although he says he had no Warrant to appear; or else grant an Attachment for his Contempt. *Id. 76, & 77.*

Yet

Yet if he hath a Warrant, he is not bound Not bound  
to appear for more than he hath Warrant for. to appear for  
more.  
*Ibid.* For if he has no Warrant, and yet does  
appear, his Client, if he be prejudiced there-  
by, may have an Action on the Case against  
him. *Ibid.* & 19.

An Infant cannot make a Warrant of At-  
torney to appear for him, for he ought to ap-  
pear by his Guardian. *Ibid.*

The Court will not grant an Attachment Attorney re-  
against an Attorney for refusing to obey an fusing to o-  
Order made by a Judge of B.R. in his Cham-  
ber, because such an Order is not to be made at a  
accounted for a Rule of Court, except it be Judge's  
Chamber.  
entred, and then it's said to be a Rule of  
Court, to which the Court expects Obedience  
to be given. *Id.* 51.

*See after, for Attachments upon Con-  
tempt, &c. Chap. 8.*

If an Attorney, Clerk, or Officer, that is Privilege of  
privileged, be arrested, and gives a Bail-Bond, Attorneys  
he loses his Privilege, and must put in Special  
Bail, or give an Appearance as the Cause shall  
require; for he ought to have lain by it till  
he had obtained a *Supersedeas*, or Rule of  
Court, for his Discharge. *Pract. Reg.* 74. See  
*after.*

An Attorney, it's said, loses his Privilege Not attend-  
for not giving Attendance in the Court for a ding Court.  
whole Year together. *Pract. Reg.* 24.

In what Cases the Clerks of B.R. shall not When to be  
have their Privilege allowed. *I. Saund.* 68, had, &c.  
69.

Where they shall have it. *Vide Pract. Reg.* Where, &c.  
500. &c.

Serjeants.

Concerning the Privilege of Serjeants. *Vide*  
2 *Lev.* 129.

Parliament-  
Men.

Concerning Privilege of Members of Par-  
liament, as well in Lands and Goods, as  
Person. *Pract. Reg.* 502.

Peers.

See 2 *Lev.* 72. how long to hold for Peers,  
and how long for Commons.

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C H A P.

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## C H A P. VII.

*Concerning Letters and Warrants of Attorney, both General and Special.*

IF *A.* is indebted to *B.* in 20*l.* and upon *B.* makes *C.* a Letter of Attorney for his own Use, &c. Afterwards *A.* Debtor, in Consideration of Forbearance, promises to pay *C.*

this, *B.* makes a Letter of Attorney to *C.* to sue him for it, and to recover the Debt to his own Use, and to release it at his Pleasure; and after *A.* in Consideration that *C.* will forbear to sue him for a certain Time, promises *C.* to pay the Debt: This is a good Consideration for *C.* to ground an Action against *A.* for the Forbearance of the Suit, of which he had Power, is accounted a meritorious Consideration. *Adjudged in Error, int. Pit & Bridgewater. Et vide Hard. 74.*

As for the Power and Authority of Guardians over Idiots, Infants, and Attorneys for Femes Covert, &c. I will refer you to Two several Treatises on those Subjects; the one Entituled, *The Infants Lawyer*; the other, *A Treatise of Baron and Feme.* And see also *Stiles Pract. Reg. last pub. 16, 17, 18, &c.* See also *Gen. Abridgment, Tit. Attorney, & Tit. Baron & Feme.*

*As to the Making of Attorneys.*

It is to be observed, That formerly at Common Law both Plaintiff and Defendant, in all Actions, both real, personal, and mixt, did appear in Person, as well in Courts of

Formerly both Plaintiff and Defendant appear'd in Person.

Record, as not of Record ; and the Command of the Writ to appear, was always intended in proper Person. 2 Inst. 249. Co. Lit. 128. 3. 8 Co. 58. b. 2 Mod. 83.

When the Court might admit him by Attorney.

Several Statutes for making Attorneys.

Appeal.

Appeal of Mayhem.

29 Eliz. cap. 5. in Actions and Informations.

Of a Responsalis.

In a quid juris clamat, none.

But after the Defendant's Appearance, the Courts of Chancery, King's-Bench, &c. that held Plea by Writ, might admit him by Attorney ; but otherwise where the Plea was held without Writ, unless the King granted a Writ de Attornato faciendo. Gen. Abr. 605.

See the several Statutes by which Plaintiffs and Defendants have been enabled to follow their Suits by Attorney. 3 Ed. 1. Cap. 41. explained. 2 Inst. 249. 6 Ed. 1. Cap. 8. explained. 2 Inst. 311. 13 Ed. 1. Cap. 10. explained. 2 Inst. 377, 378. 27 Ed. 1. 7 R. 2. 14. 3 H. 7. 1. in Appeal.

But where in an Appeal or not. Vide 2 Inst. 312, 313. 3 Mod. 268. 4 Mod. 99. 2 Jon. 210. Br. Appeal 112.

But in an Appeal of *Mayhem*, the Plaintiff cannot appear by Attorney, because the Defendant may pray Oyer of the *Mayhem*. 2 Inst. 313. 23 H. 8. 3. in an Attaint.

29 Eliz. Cap. 5. Par. 21. That the Defendant, in Actions and Informations, may, upon the first Process, appear by Attorney, which, per 31 Eliz. Cap. 10. is explained to extend only to Subjects born, and Denizens.

Of a *Responsalis*, and his Power, and how disus'd since the several Statutes that have given Power to make Attorneys. Co. Lit. 128. 3.

In a *quid juris clamat*, before any Plea pleaded, the Defendant cannot make an Attorney, because he ought to attorn in Person. 15 R. 2. Attorney 59. Jenk. Rep. 91. Vide Dier 135. Pl. 15. 1 Leon. 290, 291.

In

In a *quid Juris clamat*, if the Tenant says, *aliter*, where He had nothing in the Land the Day of the he may. Note levied, nor ever after, and thereupon they are at Issue, the Tenant shall be received to make an Attorney. 22 E. 3. 9. *Fitz Attorney* 80. 8 Co. 58. b.

In an Indictment of Trespass, the Defendant In an Indictment. may make an Attorney. 22 *Aff.* 73.

A Traverse to the Return of a Rescous Rescous. tender'd by an Attorney, otherwise if a *Cepi Corpus* was return'd against the Rescuers. *Kelw.* 165. b.

To an Indictment for a high Misdemeanor, *Ex gratia Cur'*. the Defendant, *ex Gratia Cur'*, but not *ex Rigore Juris*, may be admitted to plead by Attorney. 1 *Lev.* 146. & 1 *Rol. Rep.* 190. 2 *Bulst.* 299, 300. A Pardon of a Judgment in a *Premunire* was allowed, without the Defendant's appearing in Person. *Premunire.*

So in an Indictment of Extortion, the Defendant may make an Attorney. 22 *Aff.* 73. Indictment of Extortion. adjudged. *Br. Attorney* 63.

But if an Administrator brings Error upon an Outlawry of his Intestate for Murder, he may appear by Attorney; for though the Party himself must have appeared in Person, that he might have stood *rectus in Curia*, and answered the Matter of Fact, yet in this Case that Reason fails. *March* 113.

In a Formedon, the Tenant by Attorney In Formedon. may tender his Law. *Mich.* 7 H. 8. *Kelw.* 175. b. done accordingly, and Day given to the Tenant, &c. *Vide Kelw.* 135. a.

If one be Outlawed upon an Indictment for not repairing a Bridge, and thereupon admitted to bring a Writ of Error, he must appear, and in Person assign Error. *Per Trin.* How on an Outlawry, &c. he must appear to assign Errors.

19 Jac. Sir William Read's Case. Cro. Jac. 116. by all the Clerks of the Crown-Office: And though the Court greatly pitied the Defendant, because he was Ninety Years of Age, and very infirm, and had kept his Chamber for a Year or more; yet they held it could not be done by Attorney, being against the Course of the Court, and doubted whether the King's Privy-Seal would help him. And he was thereupon brought from his House Ten Miles from London in a Litter upon Mens Shoulders, to the Bar, and came into Court and assign'd his Error, and put in Bail to prosecute, &c. Vide Gen. Abr. 605. Pl. 7. &c.

Where it was Idem. 606. in Margine. But yet Cro. Jac. 462. allowed upon one Outlawed, (but it does not appear for Affidavit, ex what) upon an Affidavit made of his Sickness, pray'd to appear by Attorney, and the Court, ex gratia Speciali, allow'd it, but commanded the Clerk to enter, *Quod venit in propr<sup>3</sup> Persona*; yet Qu. if it may not be done upon a particular Examination thereof, made by one of the Judges, according to the Stat. 7 H. 4. Cap. 13.

Appearance by one of the Commonalty of a Town: Ill. In an Action by the Commonalty of a Town, one of the Commonalty cannot appear as Attorney for the Commonalty, for he is Party to the Action. 3. H. 6. 43. Br. Attorney. 5. Br. Corporation 4.

*Non est inventus* upon a Statute Merchant, if the Sheriff returns *quod non est inventus*, the Party cannot answer by Attorney. 26 Ed. 3. 76.

Suit-Service by Attorney, but not Suit-Real. By 20 H. 3. Cap 10. Suit Service may be done by Attorney; but that Statute extends not to Suit-Real. 2 Inst. 99, 100. But this must be by Letter of Attorney, under the Seal of

of the Suitor, who may bring his Writ for the Allowance thereof. *Vide 2 Inst. 225.*

But in Trespass or Account, if the Sheriff return *non est inventus*, the Party may appear and Account. *In Trespass by Attorney. 26 E. 3. 76.*

In Debt, the Plaintiff by Attorney cannot enter a *Retraxit*, because that is a perpetual Bar, and in manner of a Release. *Mich. 6 Jac. Retraxit in int. Beecher & Shirley. 8 Co. 58.* adjuged in Debt by an Error, and the first Judgment reversed accordingly. *Vide Cro. Jac. 211.*

If *A.* acknowledges a Recognizance to *B.* Where Gen. of 100*l.* to be paid at a certain Day, at which Day *A.* comes and proffers the Money in Court; and because *B.* was in the King's Service, *C.* his General Attorney, comes ready to receive the Money, and shews his Warrant to the Court; which was, That he should be his Attorney in Pleas and Quarrels; and this Recognizance is a Thing determined, which is no Plea nor Quarrel, therefore his Warrant does not extend to it. *Adjudged, Where he 18 Ed. 2. Execution 245.* And that upon such a Recognizance within the Year, such General Attorney shall not have any *Fieri Facias* against only a *Sci' Fa'* the Conosor, but only a *Scire Facias*, in which the Defendant may have his Plea. *Ibid. & Gen. Abr. 609.*

That no Attorney acknowledge or enter, or cause to be acknowledg'd, any Judgment, by colour of any Warrant gotten from any Defendant, being under Arrest, unless the same be enter'd into in the Presence of the Attorney for the Defendant, who shall then subscribe his Name thereunto. *Per Cur. see Pract. Reg. last pub. 21. Vide eund. 22. concerning the punishing a Bayliff, or Sheriff's Officer,*

Judgment set aside.

Upon Award  
of the Exig-  
gent.

Party dies be-  
fore Judg-  
ment signed.

Authority by  
Parole.

B. makes an  
Attorney in  
Debt against  
A. but A. is  
not named  
Executor :  
And ill.

Amended.

No Christian  
Name of the  
Attorney :  
And ill.

Officer, that shall presume to take any such Warrant, but in the Presence of the Defendant's Attorney, who shall then subscribe his Name, &c. and if no such Attorney was present, the Court will set the Judgment aside, though actually enter'd.

Where the Warrant of Attorney, upon the Award of the Exigent, will be a sufficient Warrant to appear to the Action. *Vi. i*

*Jones 201.*

If A. at Eight in the Morning, gives a Warrant to confess a Judgment, and dies at Ten, before the Judgment is signed, yet it may be done the same Day afterwards. *Raym. 18.*

That an Authority by Parole is sufficient to support a Judgment. *Stiles 348.*

If A. Executor of C. brings Debt against B. and the Record is, That B. po' lo' suo. *J. vers' A. in plit' Deb'*, and does not Name A. Executor in the Warrant : This, it's said, is no good Warrant. *Sed dubitatur. M. 4 Jac. int' Hilliard & Redman. Vide Cro. Jac. 135.* Same Case, and said, That it was amendable, and should be intended a Warrant in this Action, because there was no other Depending; wherefore it was ordered to be amended, and the Judgment affirm'd.

If a Man appears, *per Higgens Attornatum suum*, without putting his Christian Name, this is not good, but as if he had no Attorney named. *Mic. 31, 32 Eliz. B. R. adjudged int. Mallet & Tempest: So Mic. 10 Jac. B. R. Hil. 13 Jac. B. R. Sir William Howson's Case.* For the certain Name of the Attorney must be shewn, because if one appears as my Attorney, without my Authority, an Action lies. *Godb. 74.*

*Vide*

Vide 3 Bul. 202. Where 'tis said, in Sir Wil. Not amenable, because it could not be known what was meant thereby; but said, If it had been once *aliter*, if once right, and the Christian Name omitted afterwards, it should have been amended. *Vide*

*1 Rol. Rep. 381. Cro. Eliz. 153. 1 Leon. 175.*

In a Common Recovery, suffered in a *Alicia for Eli.* Writ of Entry, brought against *Eliz. P.* The *Elizabeth*; ill. Warrant of Attorney for the Defendant was *Alicia Pind. po' lo' suo A. B. &c. Vers' N.* putting *Alicia for Elizabeth*: This is not good, for here is no Warrant of Attorney enter'd for *Elizabeth*. *D. 1, 2. Ma. 105. 16.* But there is a *Quare*, if it shall be amended.

Upon a Common Recovery in the City of Error in Com<sup>r</sup> *W.* the Warrant of Attorney was enter'd Recovery, *J. S. po' lo' suo W. H.* but did not write the Attorney's Name at length, yet in the Plea-Roll Name being short. it was at length: And though it was alledged, That all the Records of the City were so; yet, *Godb. 73, 74. Shute & Clench*, inclined it was Error, *sed adjournatur.*

In a Bill of Intrusion in the *Exchequer*, the *Int' -- & J. S.* Record being enter'd, *int' — & J. S. pre-* presentem hic in *sentem hic in Cur' per J. N. Attornatum suum,* *Cur' per J. N.* though it was said to be absur'd, for a Man to *Attorn' suum:* be present in Court, and by Attorney also; yet because there were many Entries so, it was held no Error. *1 Leon. 9. adjudged.*

In an Action of Waste, *Quærens obtulit se In Waste, At-* quarto die per *Attornatum suum*, and does not shew his Name; but after, in the Assignment Name not of Waste, the Name of the Attorney is expressed; and after Judgment for the Plaintiff: Yet this is Erroneous. *D. 1 M. 93. b. 25.* adjudged.

Also

*Aliter, in  
Waste, not  
shewing the  
Attorney's  
Name, no  
Error.*

Also in an Action of Waste, the Plaintiff *obtulit se vers' Def' per Attornatum suum*, and after declares *per Attornatum suum*, and the Defendant does never appear; but a *Distringas* issues, according to the Statute, and Judgment by Default is had against him, without naming the Attorney; yet this is no Error, because 'tis not the Use of the Philazers in *Banco* to enter the Name of the Attorney before the Appearance of the Defendant. *Mich. 10 Car. B. R. int. Atkins & Higgs, per Cur'*. Adjudged upon a Certificate of the Philazers in *Banco*, and the Judgment given in *Banco* affirmed accordingly. *Gen. Abr. 607.*

Pleading up-  
on a Warrant  
to appear.

It was said by Chief Justice Roll, That an Attorney, who hath a Warrant to appear for his Client, may plead for him without Warrant; but the Clerks in Court said, he may plead no other Plea without a Special Warrant, but a *non sum informatus*: *Ideo Q. & see Stiles Rep. 380. Pract. Reg. last pub. 10, 11.*

Warrants be-  
fore or after  
Error.

For entering Warrants of Attorney, before and after Writs of Error brought, *vide Dij. 2 Eliz. 180, 48. & D. 5 Eliz. 225, 34. Cro. Jac. 227. March. 122.*

Upon Error  
in a Com'  
Recovery.

And for that of Error in a common Recovery, *Dedimus, & Mittimus, vide D. 5 Eliz. 220, 13. Raym. 70, 96.*

In Criminal  
Cases.

And note, It's said to be no Error in a common Recovery, although it doth not appear, that there was any Warrant of Attorney for Appearance. *Raym. 96.*

Defendants in Criminal Cases, but not Capital, plead by Attorney, *ex gratia Cur', sed non ex rigore Furi.* *I Lev. 146.*

An Action of the Case was brought against an Attorney, for entring Judgment without Warrant in an Inferior Court. Defendant pleaded, he was an Attorney above at Westminister, and that such may prosecute in Inferior Courts; but because he said *super*, instead of *coram Judicibus in Cur' Inferior'*, a Respond' Ouster was awarded. 3 Keb. 611. Pl. 65.

But it's said, an Attorney in B. R. cannot as such practise in the Courts of London. Id. 432. London.

Pl. 35.

*Note*, It's said, a Warrant of Attorney may be entred at any Time before Judgment. When it may be entred. Ed. 3. 1. b. Vide 2 Rol. Rep. 186. March. 122. Vide Bro. Attorney 14. Br. Amendment 95. Fitz Judgment 86.

By 32 H. 8. Cap. 30. Every Attorney must deliver in his Warrant the same Term when the Issue is entred on Record, or before, under the Penalty of 10*l.* to be forfeited to the King.

And by 18 Eliz. Cap. 14. It must be delivered in as by the Laws and Statutes it ought, under the Penalty of 10*l.* one Moiety to be forfeited to the King, the other to such Officer in whose Office it ought to be delivered, entered, or filed; and such Imprisonment as the Court shall think fit.

By the 18 Hen. 6. Cap. 9. In such Actions wherein Proces of Capias and Exigent are awardable, the Warrant must be entred in the same Term in which the Exigent is awarded, under the Penalty of 40*s.*

After Verdict in any Court of Record, Judgment shall not be stay'd or revers'd for Want of a Warrant of Attorney. 18 Eliz. Cap. 14.

By

*Stat' 4 & 5  
Anna Regine.  
For Amend-  
ment of the  
Law.*

*Proviso.*

By 4 & 5 *Annae Regine*, for the Amendment of the Law, all Statutes of Jeofails to be extended to Judgments by Confession, *nihil dicit, or non sum informatus*, so as there be an Original Writ or Bill, and Warrants of Attorney duly filed according to Law, as is now used.

"With a *Proviso*, That the Attorney for the Plaintiff or Demandant, in any Action or Suit, shall file his Warrant of Attorney with the proper Officer of the Court where the Cause is depending, the same Term he declares: And the Attorney for the Defendant or Tenant shall file his Warrant of Attorney, as aforesaid, the same Term he appears, under the Penalties inflicted upon Attorneys by any former Law, for Default of filing their Warrants of Attorney.

Q. ~~Q.~~ Therefore Quere how the Cases following must now be construed.

At any Time  
after Judg-  
ment, before  
Error  
brought.

When War-  
rant may be  
entred by  
Reason of  
Laches upon  
Error  
brought.

For by *Dyer*, 2 *Eliz.* 180, 48. & *D.* 5 *Eliz.* 225, 34. it's said, That a Warrant of Attorney may be entred at any Time after Judgment, before any Writ of Error brought: And *Gouls.* 91. 12 Years after, the Party making Oath he had retain'd an Attorney, and that it was neglected: And for a Diversity, where it appears there was a Warrant, and where not. *Vide March* 121.

Again, That after Judgment and a Writ of Error brought, returnable in *Michaelmas* Term, and nothing done thereupon, nor prosecuted; therefore in *Easter* Term a Warrant of Attorney may be entred, by Reason of the Laches aforesaid. *D.* 2 *Eliz.* 180, 48.

*But*

But this before is referred to 1 *Brownl.* 46. References.  
 2 *Rol. Rep.* 186. *March* 93. *Pl.* 160, 103. *Pl.*  
 177, 121. *Pl.* 201, 133. *Pl.* 209. After the  
 Record remov'd. *Hartl.* 59. *Vide Gen. Abr.* 607.

Upon a Writ of Error, the Plaintiff af-  
 signed for Error, That no Warrant of Attor-  
 ney was entred in such a Term, and this  
 was certified accordingly, and after Two  
*Sci' Fac'* and Nichils thereupon returned, it  
 was ruled, *quod Judicium revocetur*; but be-  
 cause the Reversal was not entred of Record,  
 a new *Certiorari* was pray'd, to inform the  
 Court whether there was any Warrant at all  
 entred, for it was said not to be material in  
 what Term it was entred, so that it be entred  
 at all; and therefore a new *Certiorari* was after  
 awarded, and the Parties after agreed. *Int.*  
*Smith & Skipwith. Cro. Fac.* 277. 1 *Bulst.* 21.  
 & see 2 *Rol. Rep.* 186.

So after Judgment in *Banco*, if the Defen-  
 dant against whom the Judgment is given,  
 brings a Writ of Error, returnable the first  
 Day of *Trinity Term*, but the Writ is not de-  
 livered to the Clerk of the Treasury till six  
 Days after the Day of the Return: In this  
 Case, the Defendant in the Writ of Error,  
 may put in a Warrant of Attorney for the  
 Plaintiff in the Writ of Error, by Leave of  
 the Court, and this shall be entred according-  
 ly. *D. 5 Eliz.* 225, 34. *Vide March* 122, 134.

Again, If a Man recovers by Judgment  
 against *J. S.* who brings the Writ of Error  
 the same Term the Judgment was given,  
 though the same Term the Record is in the  
 Breast of the Judges, yet the Plaintiff shall  
 not be received after, to put in a Warrant of

Error af-  
 sign'd, that  
 no Warrant  
 was entred in  
 such a Term,  
 not material,  
 so as, &c.

After a Writ  
 of Error, by  
 Leave of the  
 Court, &c.

Error the  
 same Term;  
 and Plaintiff  
 not received  
 to put in a  
 Warrant;

Attorney for himself. D. 6, 7 Eliz. 230, 58.  
& March 122.

In a Com' Recovery,  
the Warrant  
dated after  
Judgment.

Error.

By a Feme  
Covert.

Removal re-  
corded.

Removal in  
Law upon  
Conusance of  
the Plea  
granted.

Again, if in a common Recovery, the Original be returnable Oct<sup>r</sup> Mich<sup>r</sup>, which is the 9th of October, and the *Dedimus Potestatem*, for the Defendant, *de Attornato faciendo*, bears Date the 11th of October, and the *Mittimus* thereof in B<sup>o</sup>. bears Date the 30th of October, which is after the Relation of the Judgment, which is in Oct<sup>r</sup> Mich<sup>r</sup>. and so the Warrant was dated after the Judgment given, contrary to the Supposal of the Writ of *Dedimus Potestatem*, which runs, *cum Breve nostrum pendeat coram, &c.* and this does not depend after Judgment. D. 5 Eliz. 220, 13. Per Cur. Error.

### *Removal of Attorney.*

In a Writ of Ward brought by Baron and Feme, by Attorney, the Feme may remove the Attorney, without the Consent of the Husband. 21 Ed. 3. 12. *Fitz Attorney* 91.

If the Court record, That the Attorney is removed, this is a sufficient Removal in Fact, without any Entry of the Removal. 24 Ed. 3. 37. *Fitz. Att.* 79.

And it is accounted a Removal in Law, where the Tenant makes an Attorney in B<sup>o</sup>; and after Conusance of a Plea is demanded by a Franchise, and granted, the Attorney shall continue Attorney for him in the Franchise also, without other making; and he is his Attorney there in *Facto* before other Removal, for the Conusance is granted to hold Plea as the Justices ought if this had not been granted. 21 Ed. 3. 45. b. 61. 21 *Aff. Pl.* 17. *Fitz Receipt* 133.

So if after the Consulsance granted, a Resummons be sued for the Failure of Right there, in the Court where this was granted, he continues Attorney for him there also upon the first Retainer. 21 *Aff. Pl. 17.* 21 *Ed. 3.* 61. b. *Fitz Receipt 133.*

If Judgment be given in B<sup>o</sup>. against the Demandant, and this is reversed in B. R. for Error in the Process, the Attorney which the Tenant had in the first Plea, shall continue his Attorney now in B. R. to answer to the Original. 21 *Aff. Pl. 17.* 21 *Ed. 3.* 61. b. *Fitz Receipt 133.* *Vide Gen. Abr. Tit: Attorney, per tot.*

After Reversal of Judgment for Error in Process.

### *As to the Expiration or Determination of a Letter of Attorney, &c.*

If in Debt the Defendant wage his Law by Attorney, at the Day that he hath to make his Law, the Attorney may plead the Release of the Plaintiff after the last Continuance.

Release pleaded by Attorney upon Ley Gager.

22 *Ed. 3.* *Attorney 92.* For his Warrant was not determined, though his Master ought to make his Law in Person.

In Debt after Judgment given, the Attorney of the Plaintiff cannot release the Damages, because his Power after the Judgment is determin'd.

*Gen. Abr. 608.*

If a Man recovers Damages in Trespass, and the Defendant comes upon the Exigent, and says he hath agreed with the Plaintiff, the Attorney of the Plaintiff shall not be received to acknowledge this, because his Power is ended by the Judgment given. 34 *Ed. 3.* *Attorney 95.*

after Judgment upon the Exigent.

*Vide 2 Inst. 378. See after.*

He may acknowledge Satisfaction, upon Receipt of Money from the Sheriff, &c.

So though he receives none of the Money.

Authority not determin'd by Judgment.

He is Attorney at all Times pending the Plea, &c.

Authority by Letter of Attorney; also by Word of Mouth.

But if the Attorney, after Judgment given for his Master, receives the Money levied upon the Execution, he may acknowledge Satisfaction. *P. 14 Jac. B. R. per Coke.* Also, the Sheriff may pay the Money, or deliver the Goods taken in Execution, to the Plaintiff's Attorney. *Godb. 217. Rol. Rep. 366. per Coke.*

So after Judgment, the Attorney of the Plaintiff may acknowledge Satisfaction, altho' he receives none of the Money. *P. 14 Jac. B. R.* Said by the Clerks to be the common Course. *1 Rol. Rep. 366. Vide 1 Rol. Abr. 16. Pl. I.*

That the Authority of the Attorney is not determined by the Judgment. *Stil. 426.* And 'tis said, that he may acknowledge Satisfaction on a Judgment against Three, by a Warrant for One. *1 Keb. 593. Pl. 59.*

If one Man makes another his General Attorney in all Pleas, to hold till a certain Time, and after, before the Time expired, he appears in an Action for him, and after pending this Plea, the Time passes, yet his Warrant is not determined, for he who is Attorney at one Time, is Attorney at all Times pending the Plea, if he be not removed. *15 Ed. 3. Attorney 70. Vide 2 Rol. Rep. 456.*

If one hath a Letter of Attorney to deliver a Deed to another, and also Authority from the Party by Word of Mouth to do it, he may make Use of which of these he will to do it by, but not of both, for the first which he makes Use of shall be effectual, and the other shall be void. *Pract Reg. last pub. 15.*

One cannot force an Attorney to be his Not by Attorney against his Will, by *Roll*, Chief Ju. Force. *stice. Id. 22.*

Concerning the Determination of the Power determin'd.  
Power of an Attorney after Judgment, *vide min'd.*

*22 Ed. 3. & e contra Attorn. 92. & 4 Ed. 3.*  
*Att. 18. 15 Ed. 3. Att. 70. & 2 Rol. Rep. 456.*

If the Attorney for the Plaintiff or Defendant do die hanging the Suit, and the Party whose Attorney is dead have Notice given him of it, and will not retain another Attorney to prosecute for him, the Attorney for the other Party may proceed, and is not bound to hinder his Clients Cause for it. *Pract. Reg. last pub. 13. Vide 2 Keb. 275. Pl. 37.* The Party must be required to make a new Attorney, unless any other doth voluntarily undertake it.

Attorney dying pending the Suit.

*See after.*

*Note;* Altho' the old Books say, an Attorney Modern Practice may be made by Writ or by Deed, and may continually be demanded in Court, yet the Practice generally of late is only on Parol Retainer, and to enter the Warrant at any Time, as well after Judgment as before; but then the Court will leave the *Custos Brevium* to sue upon the Statute, if the Warrant be not actually filed sometime before Issue, &c. *Vide 2 Keb. 199, 30. B. R.*

Also, the Plaintiff or Defendant may not change his Attorney pending the Suit, without Leave of the Court. *Pract. Reg. 14. B. R.*

Where the Plaintiff obtain'd a Judgment in Debt, and received the Money, and made a Warrant of Attorney to acknowledge Satisfaction, and after and before Satisfaction acknowledged, revoked his Warrant, the Court made a Rule, That no Proceeding should be

on the Judgment, without Motion first made in Court. *Vide Raym. 69. B. R.*

Fees must be satisfied.

Penalty for retaining a new Attorney.

Warrant determin'd by Attorney's Death.

Not to be chang'd without Cause.

Not to be paid his Fees till Business done.

An Attorney ought to be satisfied his Fees, before any other Person shall be admitted to proceed in the Cause, in which another was formerly retained as Attorney, or be compelled to deliver up his Client's Writings and Papers to him. *Pract. Reg. B. R. Pag. 14.*

It's said, That in the Case of *Boyl and Scarborough*, the Chief Justice commanded a Rule to be made, and set up in the Office, that none should retain an Attorney in a Cause where an Attorney is formerly retain'd, without first acquainting the Attorney that was first retain'd, or the Secondary in the Office, upon Pain of 5*l.* *Id. 23.*

That if an Attorney dies pending his Client's Cause, his Warrant of Attorney is determin'd, and his Clerk may not proceed in the Suit without another Warrant; for the Attorney's Clerk is not trusted by the Client, but the Master, and by his Death the Trust is determined. *Ibid.*

Also it's said to be against the Rules of the Common Pleas, and against the new Rules in B. R. for one to change his Attorney in a Suit, without good Cause, and the Leave of the Court. *Ibid.*

The Court of B. R. will make no Rule for an Officer thereof to be paid his Fees, before he hath dispatched his Client's Business; but if his Client will not pay him his Fees after he hath done his Business, the Court will grant an Attachment against him, although the Officer may have an Action to recover his Fees. *Idem Pract. Reg. last pub. 23.*

## C H A P. VIII.

*Of Attachments and Commitments for Contempt of Process, &c.*

ONE may be committed for a Contempt Commitment done to the Court of *B. R.* but the Matter for a Contempt must be certain, and not <sup>for a Contempt.</sup> doubtful; and must be either in open Court, or upon Affidavit made thereof. *Pract. Reg. last pub. 166.*

Also an Attachment lies against one for a Contempt done to the Court, to bring him in to answer the Contempt, &c. *Ibid.*

One took a *Latitat* out of the Court of *B. R.* and arrested the Party, and refused to take Bail of him, but carried him into another Liberty, to charge him with an Action there; and the Court granted an Attachment for the Abuse of the Process of the Court.

*Stil. Rep. 343.*

So upon carrying the Party arrested into a Corporation, and arresting him again there, and not proceeding upon the *Latitat*, but in the Corporation. *Id. 239.*

And if a *Latitat* be taken out of *B. R.* against another, by one that has no Cause of Action, the Defendant may have an Action on the Case for it. *Id. 212.*

An Attachment may be granted against the Party that hath agreed to a Special Verdict, and doth refuse to pay his Part of the Costs expended upon the Trial, or for refusing to

bring it, when agreed upon, into Court. *Pract.*  
*Reg. last pub. 51.*

For arresting Defendant before Judgment.

So in a Case where the Court was informed upon an Affidavit, That one *L.* had arrested *D.* after a Verdict found for *L.* against *D.* to the intent that he might have him in Custody when the Judgment was entered against him, the Court granted an Attachment, if he would not discharge the Party, or shew good Cause. *Id. 53. Stiles Rep. 211, 212.*

For arresting several times for one Cause.

An Attachment was granted against one for arresting another Three several Times, upon *Latitatis* taken out of *B. R.* for one and the same Cause, and not proceeding against the Party arrested upon any of them; for this was to use the Authority of the Court merely for Vexation. *Pract. Reg. 55, 56.*

For persuading the Jury not to appear.

An Attachment was granted against one of the Parties, who persuaded the Jury return'd not to appear at the Day, upon Pretence he had obtained an Injunction out of *Chancery* to stay Proceedings in the Suit. *Id. 51, 52.*

For dividing a Debt.

Upon an Affidavit that the Debt was above 40*s.* and divided into several Actions in a Court Baron, the Court of *B. R.* awarded a Prohibition and an Attachment, unless Cause shewn. *1 Keb. 360.*

For not paying the Costs taxed.

An Attachment lies in *B. R.* against the Parties that will not pay such Costs as are taxed by the Master of the Office of *B. R.*, for it is the taxing of the Court, though done by the Officer; and the Refusal to pay them is a Contempt to the Court, and not to the Officer. *Pract. Reg. 54.*

Not confessing the Lease, &c.

An Attachment was granted against the Defendant, for not confessing of Lease, Entry, and Ouster, in Ejectment. *Ibid.*

An

An Attachment was granted against one For proceeding for proceeding in an Inferior Court, notwithstanding that a *Habeas Corpus* issued out of *B. R.* and thereupon a *Supersedeas* was also granted to stay the Proceedings there; and an Amercement was set upon the Party that was to return the *Habeas Corpus*, for not making a Return of it. *Ibid.*

So it doth lie upon a Motion, for not making a Return of an *Habeas Corpus* upon a turning it. *Pluries Habeas Corpus* issued forth. *Id. 55.*

An Attachment was granted against one for taking out an Execution without any Judgment to warrant it; for it was foul Practice, and an Usurpation upon the Authority of the Court. *Ibid.*

And generally an Attachment doth lie for any Contempt done against the Court of *B. R.* for the Court will uphold its Authority. *Ibid.* generally. Yet in some Cases the Court doth not use to grant an Attachment against Persons for Misdemeanours done against the Court, but will send a Tipstaff to bring in the Offender, if the Party lives in or near London. *Id. 54.*

If a Plaintiff and Defendant do by Consent Upon a Rule cause a Rule of *B. R.* to be made betwixt them, although the Court would not have made the Rule without such Consent; yet if either Party will not obey it, the Court will grant an Attachment against him that obeys it not, if the other Party desires it. *Pract. Reg. 50.*

Yet the Court will not grant an Attachment against one, for disobeying an Order made by Justices of Assize, unless the same be made an Order of the Court. *Ibid.*

Also,

Not without  
Notice.

Also, the Court will not grant an Attachment against one for disobeying a Rule of the Court, except it be proved, that personal Notice, where such Notice is requisite, was given him of the Rule. *Id.* 52.

Against Wit-  
nesses, &c.

It's said, if Witnesses will not appear to prove the Perjury upon an Indictment, if serv'd with Process, whereby the Trial goes for the Defendant, the Court will grant a new Trial, and an Attachment against the Witnesses. *Id.* 56. But by 1 Keb. 198. an Attachment lieth not against Witnesses, though the King be a Party. *Ergo quæreg.*

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C H A P.

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## C H A P. IX.

*Concerning Barretry, Champarty, and Maintenance.*

A Common Barretor, is a common Mover and Exciter or Maintainer of Suits, Quarrels, or Parties, either in Courts, whether of Record or not, or in *Pais*, in Disturbance of the Peace, by taking and detaining Possessions of Houses, &c. Goods, &c. in Controversy, by Force, Subtilty, or Fraud, and often in Suppression of Truth and Right, and by false Inventions, and sowing of Calumnies, Rumors, and Reports, by which Dissention and Disquiet arises amongst Neighbours. 8 Co. 36. b.

Champarty signifieth a Maintenance of any Man in his Suit depending, upon Condition to have Part of the Thing (be it Lands or Goods) when 'tis recovered. F. N. B. 171. And Champertors be they that move Pleas or Suits, or cause to be moved, either by their own Procurement, or by others; and pursue at their proper Costs, for to have Part of the Land in Variance, or Part of the Gains. A<sup>o</sup> 33 Ed. 1. Stat. 2. in' Fine; & 4 Ed. 3. Cap. II. Vide Reg. Orig. 183. Every Champarty implieth Maintenance. Crompt. Jurisd. Fo. 39.

There.

Maintainer  
of Suits,  
what.

Therefore a Maintainer is he that secondeth a Cause depending in Suit between others, either by lending of Money, or making of Friends for either Party towards his Help. *Anno 32 Hen. 8. Cap. 9.* And when a Man's Act in this Kind is by Law accounted Maintenance, and when not, *vide Brook Tit. Maintenance, & Kitch, Fo. 202. F. N. B. 172. Crompt. Jur. 38.* The Writ that lieth against a Man for this Offence is likewise called Maintenance. *Terms del Ley, verb. eod. Vide Kitcb. 204. & Cromp. Inst. of Peace, Fo. 155. b.*

Common  
Solicitor.

A common Solicitor who solicits Suits, is by some reckon'd a common Barretor, and may be indicted thereof, because 'tis no Profession in Law. *Trin. 14 Jac. in Camera Stellata, int. Oliver & Blanchflower.* And it was so held by Coke, Chief Justice, and the Lord Chancellor. *See Gen. Abr. 725.*

Attorney is  
a Solicitor.

But though an Attorney in the Court where he is sworn be chiefly interested in the Practice thereof, yet whatever Business he transacts in any other Court, he is therein no more than a Solicitor. Nor can he, (as appears by many Precedents) otherwise than as a Solicitor, bring an Action for his Fees and Disbursements in those other Courts whereof he is not a Sworn Attorney, or Entring Clerk: So that what is above said seems to be meant of upstart intruding Solicitors, who have not been educated in Clerkship and Law-Practice.

*Vide Stat. 3. Jac. 1. Cap. 7.* None shall be admitted Attorneys, but such as have been brought up in the same Courts, or otherwise

wife

wife well practised in soliciting Causes, &c.  
And none but such shall be hereafter suffered  
to solicit Causes in any Court.

If a Man prosecutes an infinite Number of Not for pro-  
Suits, which are his own proper Suits against  
others, yet he shall not be a Barretor by this; secuting a-  
for if they are false, the Defendants shall have  
Costs against him: And if such Person shall  
be a Barretor, then he that sues for Cause,  
may be comprehended: But he that stirs up  
Suits amongst his Neighbours, is a Barretor. *Ali' of a  
11 Jac. B. R. Somes's Case, per Cur. Stirrer up of  
Suits.*

*See the Case of Barretry, 8 Co. 36. b. 37. 3.*

*3 Mod. 97, 98. 3 Inst. 175.*

But if a Man designs not the Recovery of And to ruin  
his own Right, but merely to ruin and op- his Neigh-  
press his Neighbours, it is Barretry, *per 3 Mod.* bours, &c.  
98. But this must be in many Cases, and more  
than once or twice, so that he may be proved  
a common Barretor. *8 Co. 37. b.*

If A. brings an Action against B. for 4000*l.* Where Main-  
whereas in Truth A. owes B. 200*l.* and B. tenance in a  
owes A. nothing, and thereupon B. is brought Barrister.  
before a Judge, to give Bail to the Action;  
and C. who is a Barrister at Law, is there pre-  
sent, soliciting this Suit for A. this is Main-  
tenance in C. but not Barretry, unless C. knew Where Barre-  
that A. had no Cause of Action. *Hill. 1 Jac 2. try.*  
*int. Dom. Reg. & . . . 3 Mod. 97.*

The Chief Justice at the first inclined ac- And he found  
cordingly; but it appearing upon Evi- guilty.  
dence, That C. did entertain A. in his  
House, and brought several Actions in  
his Name, where nothing was due, C.  
was found guilty of Barretry. *Vide. Gen.*  
*Abridg. 725, 726.* To

To call a  
Man, Com-  
mon Barre-  
tor, &c. is  
not actiona-  
ble.

To call a Man a common Barretor, and  
that he would indict him for it at the next  
Assizes, no Action lies. *Cro. Eliz.* 171. *Yelv.*  
90. *I Rol. Abr.* 59. *Pl.* 3, 4. *Hetl.* 140. Other-  
wise of an Attorney. *I Rol. Abr.* 54. *Pl.* 15.

So it's said, if spoke of a Justice of Peace,  
or publick Officer. *Hob. Rep.* 189.

Thou maintainest such a Suit, actionable.  
*Cro. Eliz.* 297.

He is convicted of Barretry. *Hetl.* 141.  
*Hut.* 104.

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C H A P.

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## C H A P. X.

*Some other Cases relating to Law-Practice  
and Proceedings.*

**I**F a Man razes the Name of the Obligor out of an Obligation, and in the room puts in the Name of J. S. and after sues him upon this Obligation, J. S. may have an Action upon the Case against him for this.

*Trin. 43 Eliz. B. R.*

For razing  
out and put-  
ting in  
Names.

But if a Man makes an Obligation in my Name, I may not, it's said, have a Writ of Deceit against him, because I may avoid the Deed by the Plea of *non est factum*. 19 H. 6.

44. Br. Deceit 17. *Fine de Terre* 54. *Fitz* 10.

But if a Man acknowledges a Fine in my Name, or in an Action in my Name acknowledges a Judgment of my Land, (which will bind me perpetually) in such Case I may have a Writ of Deceit against him who acknowledges it. So if a Man acknowledges a Recognizance, Statute Merchant, or Staple, in my Name. 19 H. 6. 44. Br. Deceit 17. *Fine de Terre* 54. Br. *Eftoppel* 182. *Fitz* 10.

*Aliter*, for  
acknowledg-  
ing a Fine,  
&c. in my  
Name.

If my Feoffee, upon Condition to re-enfeoff me, acknowledges a Statute, and after re-enfeoffs me, and after that the Conusee sues Execution against me, I may have a Writ of Deceit against the Feoffee, for I enfeoffed him to be re-enfeoffed, discharged. 28 Ed. 3. 91. 1 Rol. Abr. 10. Pl. 13.

If

For making Estate, contrary to Agreement.

For arresting one coming to answer a Writ in *B<sup>o</sup>.* after once discharged by *Habeas Corpus.*

Where the Cause is out of the Jurisdiction.

For suing the Plaintiff upon Execution after a Release.

He is put to his *Audita Querela.*

Suing Execution after a Release, and after a Year.

He is put to his Writ of Error.

If it be agreed between you and me, That you shall make an Estate to me in certain Lands ; if you make a Feoffment thereof to another, I may have an Action for the Deceit. 3 Hen. 7. 14. *Fitz Act. sur le Cas 20.*

If *B.* comes to answer a Writ that *R.* hath depending against him in Bank, and *A.* causes him to be arrested in *London*, and he sues a *Corpus cum Causa*, by which he was removed and discharged ; and the Day after he goes into *London* for his Evidences, and *A.* knowing the said Writ to be depending against him at the Suit of *R.* arrests him again, he may have an Action against him for this Vexation. 7 H. 6. 45. *Fitz Action sur le Cas 4. Br. 50.*

So an Action lies for arresting a Man by Process out of an Inferior Court, where the Cause of Action arose out of the Jurisdiction. 2 Mod. 214. *per Cur.*

If *A.* recovers Debt or Damages against *B.* and after *B.* pays the Sum recovered to *A.* before any Execution sued out ; and upon this, *A.* releases all Actions, Executions, &c. to *B.* yet after, within a Year, sues out a *Capias* against *B.* and takes him in Execution, *B.* shall not have any Action upon the Case against *A.* for this Vexation, in suing out Execution after a Release ; but he is put to his *Audita Querela*, being the Remedy which the Law has provided for it. *Mich. 16. Jac. B. R. int. Bemis & Gildersley. 1 Rob. Abr. 34. Pl. 11, 12.*

So in this Case, as if after the said Release, and after the Year, he sues Execution by a *Capias*, and takes him in Execution, which is erroneous, being after the Year ; yet no Action upon the Case lies for this Vexation, but he is put to his Writ of Error to help himself.

*Ad.*

*Adjudged in Casu quo supra. Vide Cro. Jac. 505,  
506.*

If *A.* sues an Action against *B.* in which *J. S.* *A.* recovers and *J. D.* are *Manucaptors* for *B.* and after *A.* recovers against *B.* and *sues out a Capias ad satisfaciendum* against him, which was return'd *Nihil*; and after *A.* knowing that *W.* was not a *Manucaptor* for the said *B.* but that *J. S.* and *J. D.* were *Manucaptors*, in Deceit of the Court, procures two *Sci' Faoias's* to be awarded against *W.* as *Manucaptor* of *B.* upon which Two *Nibils* are returned, and thereupon a *Capias ad satisfaciendum*, by which the said *W.* is taken in Execution; he shall have an Action against *A.* though it was the Act of the Court to grant such judicial Process; for they were procured in Deceit of the Court, and to the Damage of the Party; and so the Action lies for the wrongful Vexation. *Adjudged int. Baron & Sleigh, Mich. 40 & 41 Eliz. B. R. Vide Cro. Eliz. 628. Et vide eund. 793, 794.* where an Action lies for a Matter done in Deceit of the Court.

If *A.* sues an Action against *B.* in London, where *C.* and *D.* become *Manucaptors* for *B.* and after *C.* in the Name of *B.* *falso & deceptivo*, procures an *Habeas Corpus* out of the Exchequer to remove the Suit there, and after hires *E.* and *F.* whom he knew to be insufficient to become *Manucaptors* for the said *B.* And after that a *Procedendo* is granted; and afterwards *A.* recovers there against *B.* and *B.* goes beyond Sea, so that an Execution cannot be had against him; and by Reason of the said Fraud of *C.* the first *Manucaptors* are discharged; so that *A.* cannot have Execution against them, yet *A.* may have an Action on the Case against *C.* for this Deceit. *Hill. 41*

*I Eliz. gainst C.*

*Eliz. B. R. inter Skaleborn & Harrison.* But see *Cro. Eliz.* 714. same Case ; but the same Point not adjudged, because the Jury did not find that he did procure the *Habeas Corpus*, &c.

For he deceitfully inform'd the Clerks in the Exchequer, That the Second Bail was sufficient.

So in the same Case, though C. does not procure the *Habeas Corpus*, but another ; but C. *falso & deceptive* informs the Clerks of the Courts in the *Exchequer*, That the second Bail is sufficient, where it is not, and so the first Bail is discharged, and the Plaintiff defrauded of his Debt ; an Action lies. *Adjudged 41 Eliz. int. Harrison & Scallard. Vide Cro. Eliz. 714. & Cro. Jac. 602. Palm. 142, 143. dubitat. & Palm. 276.* Same Case cited, and said to be ended by Composition.

Where the Defendant vexatiously sues out (one after another) two *Fi' F's*, the first being return'd executed, &c.

If A. hath a Judgment and Execution by *Fieri Facias* for a Debt against B. and the Sheriff upon the said Writ returns to the Court, That he had taken Goods to the Value, but that they remained in his Hands *pro Defectu Emptorum* : Whereupon A. knowing all this, fraudulently to charge B. again sues out another *Fi' Fa'* to the same Sheriff, who thereupon takes other Goods of B. and therewith satisfies A. his Debt. B. may have an Action upon the Case, because this is a Vexation and Damage, and done by Fraud against his own Knowledge, on purpose to vex B. *Adjudged, Trin. 17 Jac. int. Wateror & Freeman. Vide Hob. Rep. 278. & 1 Rol. Abr. 34. Pl. 5.*

Bail for J. S. at the Request and Promise of J. D.

Where I become Bail for J. S. at the Request of J. D. if, before the Action determined, J. D. promises, in Consideration thereof, to discharge me, this is a good Consideration, and I may have an Action if he fails. *1 Rol. Rep. 382. 3 Bul. 187.*

But

But if the Servant of *A.* be arrested in *Lon.* *J. S.* bails the *Servant of A.* for a Trespass, and *J. S.*, who knows *A.* and after *A.* for his Friendship promises to save him harmless of his Damages and Costs, &c. and afterwards *J. S.* is charged, yet the Consideration of a Promise is not valuable, because the Bailing, which was the Consideration, was past and executed before the Promise made. *Dyer 10 Eliz. 272. 2 Leon.*

225. *Telv. 41. Vide Hard. Rep. 72.*

But 'tis observed, it had been otherwise, if the Master had before requested him to become Bail for his Servant. *Dyer, ut supra.* *Vide Hob. 106. 2 Leon. 225.* agreed to ; and *Cro. Car. 409.* same Point agreed, though *Owen 144.* seems to be *contra* : Also *Cro. Eliz. 885.* and *Moor 643. Pl. 886.* But in *Moor*, the Consideration was not laid to have been done at the Defendant's Request.

Also if *A.* comes to *B.* and intreats him to become bound in an Obligation for one of his Friends, and *B.* is contented, at his Request, to become bound, and becomes bound accordingly ; and after *B.* comes to *A.* and says to him, I was content, at your Request, to become bound for such an one, &c. I hope you will save me harmless, and *A.* says that he will ; this Consideration, 'tis said, will well maintain an Action, though he was bound before, inasmuch as it was at his Request. *Cro. Eliz.*

42. *2 Leon. 224. Godb. 31.*

In Debt by *A.* against *M.* upon a Bond, if *A.* recovers, *D.* is Bail for *M.* and after *A.* recovers, and Process is continued till *A.* hath Execution awarded against *D.* the Bail ; and after *A.* in Consideration that *D.* will pay to him the Condemnation, assumes and promises to *D.* the Bail, if he

to discharge him of the said Execution, and further to assign over the said Bond of *M.* the Principal, upon which *D.* pays the Money to *A.* but *A.* will not assign over or deliver the Bond to him; yet it is a good Consideration for *D.* to have an Action upon the *Assumpſit* against *A.* for though the Money paid by *D.* to *A.* was due, and *D.* compellable to pay it by Force of the Execution awarded against him, yet there might be Charge, Labour and Trouble, to *A.* in the Service of the Execution, in getting the Money, and then when *D.* gives this Money to *A.* without this Trouble or Charge, 'tis a good Consideration for an *Assumpſit*. *Adjudged int. Dixon & Adams, Trin. 39 Eliz. B. R. Gould. 156.* Yet *Moor 710. Pl. 992. & Cro. Eliz. 538.* said to be reversed upon Error in *Scaccario.*

*A good Conſideration.*

Obligee pro-  
cures a Writ  
against Infant  
*fur Obl.* and  
then he being  
of full Age,  
promises to  
pay if he will  
not arrest  
him.

If an Infant enters into a Bond for a certain Sum of Money, and after the Obligee brings Debt against him upon the Bond, and procures a Writ to arrest him; and then he, being of full Age, having Notice thereof, comes and says to the Obligee, That if he would not arrest him, he would pay him the Money: This, it's said, is not any Consideration to maintain an Action, inasmuch as the Infant might have avoided the Bond by Plea. *Cro. Eliz. 700. Pas. 42 Eliz. B. R. int. Monnings & Knoppe.* But *Cro. Eliz. 127. — 1 Leon. 114. 3 Leon. 164. 4 Leon. 5.* and others, are contrary.

Infant takes  
up Goods,  
and being  
threaten'd,  
his Mother  
promises to  
pay, &c.

If an Infant takes up certain Commodities of a Mercer at a certain Price, who after, for Non-Payment of the Money, threatens to sue him; and the Mother of the Infant promises to pay him if he will not sue him: This also

also, 'tis said, is not any Consideration to maintain the Action, inasmuch as the Infant was not by Law chargeable for the Money.  
*Latch. 21 Cro. Eliz. 126. 1 Leon. 113. & Owen 94. Sed vide Popb. 178. &c.*

If *A.* exhibits a Bill in Chancery against *B.* In Consideration *A.* would end all Suits in Chancery, *B.* promises to pay 100*l.* supposing thereby that he had delivered 300*l.* to *B.* in Trust; upon which, *B.* in Consideration that *A.* would end all Suits against him in Chancery, promises to pay him 100*l.* Tho' *A.* has Remedy for it at Common Law by Writ of Account, yet is this a good Consideration, so as to have an Action upon the Case upon the Promise, because the Money was delivered in Trust, which is proper for the Chancery, and the Suit there is a Matter of Charge. *Adjudged, Mich. 10 Jac. B. R. int. Pooley & Gilbert.*

The Consideration was, That the Plaintiff should stay his Suit upon a Subpæna, which he had taken out of Chancery, &c. but for that it appeared the Plaintiff was not entitled to any Relief, the Consideration was held to be void. *To stay a Suit in Chancery, wherein the Plaintiff could have no Relief.*

*2 Leon. 105. int. Toly & Windham. Cro. Eliz. 206.*

If *A.* promises *B.* in Consideration that he will not sue an Attachment out of Chancery upon a Decree which is there against him, that then he will pay him 20*l.* This is said to be a good Consideration to maintain an Action; for it seems it was intended that the Decree was at his Suit. Also hereby *A.* shall avoid the Imprisonment of his Body, of which the Chancery had Power, for the Contempt of the Decree. *Adjudged int. Colston & Carre, Hill. 42 Eliz. Cro. Eliz. 847. 1 Rol. Abr. 30. Pl. 3. Vide I 3*

*Vide Cro. Eliz. 768. & 848. like Point. Vide Gen. Abr. 55. Pl. 43.*

*Alier reported, Part of the Consideration being good, and Part void.*

But in *Gen. Abr. 63. Division Y. Pl. 1.* it runs thus, If *A.* promises *B.* in Consideration she will not sue an Attachment out of *Chancery*, upon a Decree that is there made against him, and in Consideration that she will give to him all her Title and Right of Dower, that then he will pay to her 20*l.* Though the Second Consideration is void, because it cannot be given to a Stranger, but only released to the Tenant of the Land, by Way of Extinguishment, yet the Action upon the Case lies upon the other Consideration, which is good. *Hill. 42 Eliz. B. R. int. Colston & Carre, per Cur.* and said to be adjudged, *Cro. Eliz. 847.*

*Part of Consideration being impossible, &c. need not to be alledged.*

Also there observed, that *inutilis Consideratio* vitiates not a good one ; but that it seems otherwise of a Consideration against Law. *i Syd. 38. Vide 1 Rol. Abr. 17. Pl. 11, 12. Cro. Eliz. 199. Cro. Jac. 103. 3 Leon. 208.* But that Part of a Consideration which is impossible void, or against Law, need not to be alledged. *Poph. 32.* And if alledged, need not be proved, for the Allegation was idle. *Cro. Jac. 127. Vide 1 Leon. 296. 2 Leon. 71.*

*A. and B. are bound to C. A. makes B. his Executor, who assigns Assets to D. who promises to pay C.*

If *A.* and *B.* are bound in an Obligation to pay to *C.* 20*l.* when he comes to the Age of 21 ; and after *A.* makes *B.* his Executor, and dies ; and *B.* having Assets, assigns them to *D.* and in Consideration of this Assignment, *D.* promises to *C.* to pay to him the 20*l.* when he comes to the Age of 21. *C.* when he comes to the Age of 21, shall have an Action upon the Case, upon this Promise, against *D.* though no Consideration comes from *C.* For if a Man delivers Money to

to *J. S.* to pay over to *B.* in Satisfaction of Where Money delivered a Debt due to him, this raises a Debt to *B.* to pay over, and cannot be revok'd; and so here. *Ad-* it cannot be judged int. *Disborn & Denaby, Pas. 1649.* revoked.

*Vide 1 Rol. Abr. 7. Pl. 2. and note,* there is Difference a Diversity where Goods, &c. are delivered where 'tis to deliver over, to *B.* to be delivered over to *C.* upon a Con- and where sideration as to satisfie a Debt, and where 'tis only a voluntary Gift. *2 Rol. Rep. 39. 2 Leon. 'tis Gift.*

*31. Dyer 22.<sup>a</sup>.*

If *A.* gives Goods to *B.* of the Value of *80l.* out of which he should pay to *C. 20l.* If *B.* does not pay the *20l.* to *C.* *C.* may have an Action upon the Case against *B.* and declare, That he was indebted to him in *20l.* for Goods of the Value of *80l.* given to him by *A.* out of which he should pay *20l.* to *C.* for when Goods of the Value of *80l.* are given to *B.* by Agreement between him and *A.* that he should pay *20l.* to *C.* this becomes a Debt to *C.* as if *A.* delivered *20l.* to *B.* to pay over to *C.* *C.* may have an Action of Debt or Account, or an Action upon the Case, upon a Promise for it, against *B.* *Adjudged int. Starky & Milne, Mich. 1651. Stiles 296.*

*Gen. Abr. 66. Pl. 13.*

If *A.* delivers *20l.* to *B.* and in Consideration thereof, *B.* assumes and promises to *A.* to cause and procure *J. S.* to pay the said Sum of *20l.* to *J. D.* a Stranger, upon a certain Day: If *J. S.* does not pay the said Money to *J. D.* *A.* who delivered the Money, may have an Action against *B.* upon this Promise. *Adjudged upon Demurrer, int. Osmond & Crossing, Pas. 11 Car. B. & Intr. Hill. 11 Car. Rotul.*

348.

*C.* is indebted  
to *A.* and *D.*  
to *N.* *C.* pays  
for *D.* and ap-  
points *D.* to  
pay over to  
*A.*

But if *C.* is indebted to *A.* and *D.* is in-  
debted to *N.* in 20*l.* and *C.* at the Request  
of *D.* pays the 20*l.* for him to *N.* and ap-  
points *D.* to pay so much over to *A.* for him,  
and *D.* in cons' Premissorum, promises to pay the  
20*l.* to *A.* *A.* it's said, cannot have an Action  
upon this Promise against *D.* for he is a Stran-  
ger thereto, and there is no Consideration for  
any Assumpſit to him. *Adjudged, Trin. 4 Jac.*  
*B. R. int. Ritly & Dennet.*

*Vide I Ven. 6.* like Point adjudged, and  
there said, where the Promise is made to the  
Father to pay so much to the Daughter, the  
Nearnels of the Relation gives the Daughter  
the Benefit of the Consideration performed  
by the Father. *Vide I Ven. 333.*

Concerning  
Money deli-  
vered to my  
Use.

Servant of *A.*  
buys Cattle  
of *B.* to the  
Use of *A.* and  
*B.* again re-  
ceives the  
Money of *A.*

Defendant  
pretending to  
be *J. S.* re-  
ceives his  
Money.

If a Man delivers Money to my Use, I  
may have an Action upon the Case against  
the Baylee. *I Rol. Rep. 391. Adjudged int.*  
*Beckingham & Lumb against Vaughan.*

If the Servant of *A.* buys Cattle of *B.* to  
the Use of *A.* for 20*l.* to be paid at a Time  
after, and the Servant, by the Command of  
*A.* pays *B.* the 20*l.* and afterwards *B.* comes  
to *A.* and says that his Servant hath not paid  
him, upon which *A.* pays him again, *A.* may  
have an Action upon the Case against *B.* upon  
this Deceit. *Adjudged, Mich. 4. Car. B. R.*  
*int. Dom. Cavendish & Middleton.* Being mov'd  
in Arrest of Judgment, that the Plaintiff ought  
to have Account. *Cro. Car. 141. I Jones 196.*

The Plaintiff in Case declares, That where-  
as 100*l.* was delivered him to pay over to  
*J. S.* the Defendant did affirm, that he was  
*J. S.* per quod the Plaintiff paid him the 100*l.*  
*ubi revera he was not J. S.* *Moor 538. Pl. 705.*  
*Adjudged pro Quer.* *Vide Cro. Jac. 223.*

If *A.* obtains a Judgment against *B.* in the *A. for Mo-*  
*Marshal's Court,* and afterwards, in Consider-*ney, promi-*  
ation of Money in Hand paid, assumes and  
promises to assign this Judgment to *C.* this is  
said to be a good Promise, for it is lawful so to  
do; and the Intent that it shall be assigned  
according to the common Usage, *viz.* by Let-  
ter of Attorney; so that *C.* may take out Exec-*C. may take*  
ution in the Name of *A.* which may be done out Execu-*out Execu-*  
without any Maintenance. *Int. Loder & Che-*  
*slin, Trin. 16 Car. 2. 1 Syd. 212. per Cur. 1 Keb.*  
744. *Adjudged nisi, &c.*

## C H A P.

## C H A P. XI.

## Promise to pay upon Forbearance.

If the Af-signee of a Judgment would forbear Execution.

*B.* for a Debt, assigns the Bill of *A.* to *C.* *A.* promises, that if *C.* will forbear to pay, &c.

*A.* bound in 40 l. to *B.* eloins himself, *C.* a Stranger, in Consideration of, &c. and that *B.* should assign, &c. promises to pay.

THE Consideration was, That if the Af-signee of a Judgment would forbear to take out Execution, &c. he promised to pay, &c. Adjudged a good Promise. Hard. 71. 1 Lev. 188. 1 Syd. 294. & 2 Keb. 57, 80. int. Russel & Haddock.

If *A.* be indebted to *B.* by Bill, and *B.* is indebted to *C.*, and *B.* in Discharge of his Debt due to *C.* assigns the Bill of *A.* to him; and before the Day of Payment of the Money, *A.* comes to *C.* and promises him, That if he will forbear him the Payment of the Money for a Week, that then he will pay him: Upon which *C.* forbears him; yet this is not accounted any good Consideration to maintain an Action upon this Promise, for that, notwithstanding the Assignment of the Bill, the Property of the Debt remained always in the Assignor. Adjudged per Cur. int. Mowse & Edney, Pas. 42 Eliz. B. R. See a like Point, Palm. 185. & Winch. 7. though the Assignee had Power to release and compound, &c.

If *A.* be obliged to *B.* in an Obligation for 40 l. conditioned for the Payment of 20 l. and *A.* eloins himself, so that *B.* knows not how to come at his Debt: Upon which *C.* a Stranger, in Consideration of certain Herrings given to him by *B.* and that *B.* should assign the said Obligation to *C.* with a Letter of Attorney to put it in Suit, promises to pay the said

said 20 l. This is a good Consideration to have an Action, though it was objected that the Buying of Debts is against Law. But if that be void, yet the Gift of the Hearings is a Consideration. *Adjudged, Mich. 7. Car. B. R. int. Michael & Carden. Vide 1 Rol. Abr. 30. Pl. 1, 2.*

If *B.* is indebted to *A.* and *C.* is indebted to *B.* by a Statute, and *B.* delivers the Statute of *C.* to *A.* for the Security of his Debt, but without any Assignment of the Statute or Letter of Attorney to sue thereupon, and after *B.* dies; after which *D.* pretending to be his Executor, promises *A.* That in Consideration *A.* would deliver the said Statute to him, he would pay the Debt that was due to *A.* by *B.* Though it does not appear, that *D.* can have any Benefit by this Statute, inasmuch by *B.*

*D.* pretending to be Executor of *B.* promises, that if *A.* would deliver a Statute (made from *C.* to *B.*) to him, he would pay the Debt due

that it does not appear he is Executor, yet because he pretended to be Executor, and the Statute was in the Power of *A.* so that he might have cancelled it, the Consideration was held good, and so adjudged upon a Writ of Error, *int. Lane & Mallery, Pas. 12 Jac.*

*Vide Cro. Jac. 342. & Hob. Fol. 4. & Hub. Interest in a Rep. 6. see Cro. Eliz. 821. a like Point in Case Deed may of a Bond in Judgment by Two against One, pass, though and there said, That by the Delivery, an Interest in the Deed pass'd, though the Debt it self could not.*

*A.* being indebted to *B.* in 10 l. makes *C.* his Executor, and dies, (*C.* being but of the Age of 14 Years:) Hereupon *B.* intending to procure Administration to be granted to him during the Minority of *C.* gives Notice thereof to *E.* the Wife of *A.* and Mother of *C.* *A.* indebted to *B.* makes *C.* an Infant, his Executor, *E.* the Mother of *C.* in Consideration *B.* would

permit Administration to be granted to her *durante Minoritate,* and give her Day, promised to pay *B.*

where-

whereupon *E.* in Consideration that *B.* at her Request, would permit such Administration to be granted unto her, and would give her Day for Payment of the Debt, till the Return of *C.* out of *Ireland* into *England*, promised to pay *B.* upon Request, after the Return of the said *C.* and this was held a good Consideration, and so adjudged in *B. R. Pas. 12 Car. int. Turton & Gardiner.*

*Administration durante Minoritate*  
differs from another Adminis-  
tration.

For this Administration *durante Minoritate* differs from another Administration, where the Ordinary is by the Statute, under the Penalty of 10*l.* bound to grant it to the Wife; for such a Promise by the Wife in such a Case is void; as in *Moor 685. Pl. 946. Adjudged int. Holt & Tilcock.* See *1 Leon. 240. 1 Brownl. 31. Hob. 250. int. Clark & Spurden.*

*A. Defendant's Husband, indebted to the Plaintiff, died possessed of divers Goods, which came to the Defendant, and she, in Consideration the Plaintiff would forbear, promised to pay, &c.*

The Plaintiff in Case declares, That *A.* the Defendant's Husband, was indebted to him, and died possessed of divers Goods, which, *legitimo Modo*, came to the Defendant; and in Consideration that the Plaintiff would forbear the Debt for a certain Time, she assumed and promised to pay the Debt: This was held a good Consideration, because of the general Promise to forbear the Debt, and not the Defendant only, though it did not appear, that the Defendant could have any Benefit by this Promise; and so adjudged, *Hill. 22 Jac. int. Hume & Hinton. Vide Stiles 304. Hard. 73. Raym. 73. & vide Raym. 32. & 1 Syd. 242.*

Yet

Yet Popb. 177. *dubitatur*, in a like Point ;  
so Latch. 141. & Palm. 441.

But if the Plaintiff declares, That the Defendant, in Consideration the Plaintiff would forbear to sue her as Administratrix of J. S. did assume, &c. This is held good, and a sufficient Averment that she is Administratrix. 1 Syd. 337. &c.

1 Lev. 222.

The Plaintiff declared, That C. the Husband of B. was indebted to him in 10 l. and after his Death, the said B. being big with Child, in Consideration that the Plaintiff would forbear to sue her as Administratrix of C. till such a Day, she promised to pay the Debt ; and in the Declaration it is not said that B. was Administratrix of C. and therefore held no good Consideration to ground an Action. Adjudged in Arrest of Judgment after a Verdict for the Plaintiff, Mich. 9 Car. int. Whitcher & Daves. Vide 1 Syd. 243. &c. 1 Keb. 866.

The Plaintiff declared, That the Defendant was possessed of divers Goods, that were the Goods of her Husband in *vita sua*, which she converted to her Use ; and that the Defendant, in Consideration the Plaintiff would forbear her for a certain Debt due by the Husband to the Plaintiff, promised she would pay it : And held to be no good Consideration, for perhaps she had these Goods as *bona Paraphernalia*, and so she is not chargeable with the Debt, inasmuch as he has not shewn what Goods they were. Adjudged in Error, int. Whitley & Brown, Trin. 18 Jac. B. R. Rot.

1307.

If the Plaintiff would forbear to sue her as Administratrix, she did promise,

But in the Declaration not said that B. was Administratrix of C.

Defendant converted her Husband's Goods, and in Consideration the Plaintiff would forbear her, she promised to pay.

*A.* pays the Debt of *B.* *D.* his Executor, in Consideration that *A.* would forbear to sue, promised to repay.

Equitable Interest.

Legacy.

*A.* contracts with *J. S.* and his Administrator promises to pay, &c.

Plaintiff intended to sue the Executrix *secundum debitum Legis cursum*, &c.

If *A.* together with *B.* is bound to *C.* for the proper Debt of *B.* and *A.* pays the Money, and *B.* dies, and makes *D.* his Executor; and *D.* in Consideration that *A.* will forbear to sue him till such a Time, assumes and promises to repay him: This is held a good Consideration, though *D.* was liable in Equity only; and so adjudged *int. Scot & Stephens*, *Mich. 14 Car. 2.* *1 Syd. 89.* *1 Lev. 71.* *Vide 1 Rol. Rep. 27.*

So if the Consideration be, That the Plaintiff shall release an equitable Interest only. *1 Ven. 40.* & *1 Lev. 273.*

So in Consideration the Plaintiff would forbear to sue for a Legacy. *2 Lev. 3.* *1 Ven. 120.*

A Man made a Contract with *J. S.* and dies intestate, and his Administrator, in Consideration of Forbearance, &c. promises to pay it, &c. This is said to be a good Consideration, though the Administrator was not chargeable upon this Contract at Common Law, for he was chargeable in Conscience. *Adjudged, Mich. 4 Jac. int. Richardson & Finch. Et Pas. 5 Jac. int. Walker & Wittell. Vide Moor 702. Cro. Jac. 47. Telv. 55.*

But where in Case the Plaintiff declared, 'That he intended to sue the Executrix for the Debt, *secundum debitum Legis cursum*; and that she, in Consideration he would forbear to sue her, promised, &c.' it was adjudged for the Defendant, for his Intention being to sue *secundum debitum*, &c. it cannot be intended in Chancery, nor by Way of *Assumpsit*, but by Action of Debt, which does not lie against

gainst an Executor upon a Simple Contract; and so the Staying such Suit was no Consideration. *Cro. Eliz. 804.*

An Action upon the Case was brought up. Servant promised, that his Master should forbear Suit, &c. and Defendant promised to pay the dant promise Money, and that the Master after agreed to sed to pay. the Contract and Promise of the Servant.

*11 Ed. 4. 6.* Exception was taken in Arrest of Judgment, but the Judgment was, That it was a good Promise. *Trin. 21 Jac. Senior & Woliner. Bendl. 132.*

If *J. S.* makes *W.* and his Wife Executors, Upon Executors submitting Differences of the Right of Executorship to the Award of *L.* *T.* promises that *W.* should not be troubled concerning such Right. and afterwards several Suits and Controversies arise between them and *T.* for and concerning the Right of Executorship in the Ecclesiastical Court; and *T.* in Consideration that the said *W.* at his Request, had submitted to the Award of *L.* these Matters, &c. does promise that the said *W.* should not be troubled or molested for or concerning this Right of Executorship. This is said to be a good Consideration, *viz.* the Submission to the Award, though he might immediately have revok'd it.

*Adjudged in Error int. Line & Neale, Pas. 38 Eliz. B. R. Vide Cro. Eliz. 460.* where the same Case is adjudged, and there said, this must be intended a Submission, with an Abiding to the Award; and that if the Plaintiff had revoked it, the Defendant ought to have pleaded it.

If

Executor, in Consideration of Forbearance for a reasonable Time, promises to pay, &c.

Averment.

Forbearance of a Suit a good Consideration, without present Assets.

Evidence.

Administrator, in Consideration he had Administration, and also Assets, promised to pay *tam cito* as any Debt to the Value came to his Hands, &c.

If *A.* is indebted in 20*l.* to *B.* and dies; and his Executor, in Consideration that *B.* will forbear him for a reasonable Time, promises to pay him the Debt: This is held a good Consideration to have an Action, with an Averment that he forbore him for a certain Time, *viz.* 8 Years. *Paf.* 14 *Jac.* *B. R.* *int.* *Lingben & Broughton.* *Trin.* 18 *Jac.* *B. R.* *int.* *Whitty & Browne;* & *Mich.* 15 *Car.* *B. R.* *int.* *Johnson & Whitchcott.* *Vide Huf.* 108. *Lit. Rep.* 304. *Moor* 853. *Pl.* 1167. & *I Rol. Rep.* 379. *int.* *Lingben & Broughton.*

Also in the Case of *Johnson* and *Whitchcott*, the Consideration was held good to charge the Defendant in an Action upon the Case, out of his own Estate without Assets; for by such Promise it is intended as well to forbear to sue the Executor, as to forbear the Debt; and that a Forbearance of a Suit is a good Consideration without Assets at the Time of the Promise; and this was upon a Demurrer, where the Defendant pleaded, that he had no Assets at the Time of the Promise made. *Vide 1 Ven.* 121. *sed vide Co.* 94. That if there be no Assets, the Defendant may give it in Evidence. Yet in 2 *Bul.* 278. seems 'tis not needful to prove Assets, and that such Promise is good without. *Vide 3 Leon.* 67. & *1 Ven.* 152.

If *B.* as Administrator to *J. D.* is indebted to *A.* in 20*l.* and thereupon, in Consideration that Administration is granted unto him, and that he has Assets in his Hands, assumes and promises to pay the Debt, *tam cito* as any Debt due to the Intestate comes to his Hands to the Value of the Debt, and afterwards such a Debt comes to his Hands, yet no Action lies upon this Promise, by which the Administrator

strator should be charged out of his own Estate; for here the Consideration is not to forbear to sue, or any other Consideration. *Trin. 14 Car. B. R.* in a Writ of Error upon a Judgment in Ireland, and Judgment reversed accordingly; & *Intr. Hill. 13 Car. Rotlo.* 1141. *Sed vide Cro. Eliz. 91.* adjudged con', upon a Promise by an Executor; for it's said, the Debt of Testator makes a good Consideration. *Vide 1 Leon. 94.* & *3 Leon. 129.* & *Co. Ent. 2. b.*

If A. be indebted to B. in 20*l.* and B. says A. indebted to A. that he will sue him for the Debt; whereupon A. says, That if he will forbear him *per paululum tempus*, he will pay him: This is no good Consideration of an Assumption, for that he may sue him presently. *Adjudged int. Brian & Salter, Pas. 6 Jac. B. R. & Pas. 8 Car. int. Cook & Dowse, in Error; Cro. Car. 241. & Pas. 15 Car. B. R. int. Stiles & Rowland, in Error. Vide Cro. Jac. 250. Cro. Eliz. 19. 1 Bul. 91. 2 Rol. Rep. 368. Vide 1 Leon. 61. adjudged con. Goult. 48. adjudged con. 3 Leon. 200. con.*

And as to that int. *Cook & Dowse, Cro. Car.*

*241.* 'tis there said, That Rule was given that Judgment should be affirmed. But Judgment affirmed, quare. *I Syd. 45.* the same Case cited, as ad. judged in *Cro. Car.* and denied to be Law.

See after:

Again, That if he would forbear to sue him for a certain Debt *pro aliquo tempore*, that he will pay him; and avers, That he forbore him *per unum Annum*: This also was said not to be a good Consideration, for that *aliquid tempus*

*tempus* is as little as *paululum tempus*. Int. Tilston & Clarke, Hill. 11 Car. B. R.

*Pro aliquo par-* Yet 'tis said, in Consideration that he *vo tempore, &c.* would forbear him *pro aliquo parvo tempore*, viz. a Fortnight, &c. is good. Int. Baker & Jacob, 1 Bul. 41.

*A.* is indebted; a Stranger says, if he will forbear the Debt *per paululum temporis*, he will pay, &c.

Also 'tis said, That if *A.* be indebted to *B.* and *C.* a Stranger, comes to him, and says, That if he will forbear him *per paululum temporis*, he himself will pay him: That this is a good Consideration of an *Assumpſit*, averring a certain Time of Forbearance. Paf. 41 Eliz. B. R. int. Scovell & Covell; and cited to be adjudged, Mich. 37, 38 Eliz. B. R. See after, the *Act of Parliament to charge a Stranger, &c.*

*A.* is arrested, and a Stranger then says, if he will forbear *A. per paululum temporis*, he will pay, &c.

Again 'twas there said, That if *A.* be indebted to *B.* upon which, *B.* arrests him; and while he is under the Arrest, a Stranger comes to *B.* and says, That if he will forbear *A. per paululum temporis*, he will pay him; upon which, *B.* suffers *A.* to go at large: This, it's said, is a good Consideration for an *Assumpſit*, though he arrests *A.* within an Hour after; for the Deliverance from the present Danger is a good Consideration. Per Popham.

Upon an Intent to arrest, Defendant promised, &c.

And so if the Plaintiff declares, whereas he had an Intent to arrest the Defendant, in Consideration the Plaintiff would forbear to arrest him at that Time, &c. This is a good Consideration. Stiles 459. adjudged.

*B.* was about to commence a Suit against *A.* and a Stranger promised to pay upon Forbearance.

Again, That if *A.* be indebted to *B.* in 100*l.* and *B.* was about to commence a Suit for the Recovery thereof, and *C.* a Stranger, comes to him, and says, That if he will forbear him, he himself will pay it: This is said to be a good Consideration for this *Assumpſit*

to *B.* averring that he had abstained and forbore to sue *A.* & *ad hoc* did abstain and forbear, though no certain Time was appointed for the Forbearance; for it seems a perpetual Forbearance is intended, the which he hath performed. *Adjudged Mich. 37, 38 Eliz. B.R.* It seems a perpetual Forbearance was intended. *int. Sackford & Phillips.*

But *Moor* 689. *Pl. 952.* & *Cro. Eliz.* 455. Said to be reversed upon Error in the versed upon Exchequer.

Yet vide *i. Syd.* 45. & 294. *Cro. Jac.* 683. & *Hut.* 46. the same Point as in the Case above was adjudged *per Cur. Hob.* 219. & *Popb.* 183. like Point *dubitatur. Winch.* 22. *adornatur.* See a like Precedent, *i. Brown. Ent.* 56.

### Statute 29 Car. 2. Cap. 3.

*Note,* That by the Statute 29 Car. 2. Cap. 3. it is enacted, 'That from and after the 24th Jnu. &c. no Action shall be brought to charge an Executor or Administrator upon any Special Promise, to answer Damages out of his own Estate, or to charge the Defendant upon any Promise to answer for the Debt, Default, or Miscarriage, of another Person, or to charge any Person upon any Agreement made upon Consideration of Marriage, or upon any Contract or Sale of Lands, Tenements, or Hereditaments, or any Interest concerning the same; or upon any Agreement not to be performed within one Year from the Making, unless the Agreement upon which such Action

2.

' shall be brought, or some *Memorandum*  
 ' or Note thereof shall be in Writing,  
 ' and signed by the Party to be charged,  
 ' or some other by him authorized.'

Also, ' That no Contract for Sale of any  
 ' Goods for 10*l.* or upwards, shall be  
 ' good, except the Buyer accept and  
 ' actually receive Part of them, or give  
 ' something in Earnest, or in Part of  
 ' Payment, or that some Note or *Memo-*  
*randum* thereof in Writing be made and  
 ' signed by the Parties to be charged, or  
 ' their Agents lawfully authorized.'

Where the  
Note need  
not be shewn.

Upon the first Clause it's said, That the Plaintiff in his Declaration need not shew there is any such Note in Writing; but 'tis sufficient to shew it upon the Trial. 2 *Jon.* 158. *per Cur.* *Raym.* 450.

Where it  
must be  
shewn.

But if such Promise is pleaded in Bar of another Action, it must be shewn to be in Writing; so that it may appear to the Court to be such a Promise upon which an Action will lie. 2 *Jon.* 158. *Raym.* 451. adjudged.

Considera-  
tion of Mar-  
riage.

Also as to Consideration of Marriage, the Statute was adjudged to extend to a Promise by A. to marry B. 3 *Lev.* 65. though objected the Statute intends Promises for Payment of Money upon Marriage, and not Promises to marry.

To assign a  
Term.

That an Agreement to assign a Term is within the Act, 1 *Ven.* 361. adjudged, though objected the Statute extends only to Interests created *de novo.*

Promise by  
Letter, &c.  
good.

That a Promise by Letter is good; adjudged 2 *Ven.* 361. and decreed, where Part of an Agreement for Lands was, that it should be put

put in Writing, and executed by a certain Day. 2 Chanc. Rep. 35.

If A. is indebted to B. and C. promises B. A. indebted That if A. will not pay him, he himself will : to B. C. pro- If A. does not pay it within a convenient mises, that if Time, this, it's said, will be a good Conside A. do not pay ration for B. to have an Action against A. up- him, then he will. on this Promise. Adjudged, Mich. 42 & 43 Eliz. B. R. int. Sadler & Hawkes ; and said, it must be intended there was a Promise to A. Forbear- forbear to sue A. in the mean time. 1 Rol. ante inten- Abr. 15. Pl. 9.

That if A. delivers Money to B. to pay to A. delivers C. and B. promises C. to pay it to him ; yet Money to B. C. can have no Action against B. upon this to pay to C. Assump<sup>s</sup>it, because there is no Consideration and B. promi- between them. Adjudged int. Howlett & Hal- fes C. to pay lett, Hill. 37 Eliz. 1 Rol. Abr. 7. Pl. 2. But see before, int. Starky & Milne, what Sort of Action C. may have, where A. delivers B. Money to pay to C.

But if in this Case he had given Day to B. Day given to to pay it, this had been a good Consideration upon which he might have had an Action ; per Walmley. Vide Tolv. 164. like Point adjudged.

Also, That if A. being indebted to B. de- A. indebted liver Money to C. to pay over without to B. delivers any Delay to B. and C. in Consideration Money to C. thereof, assumes, &c. this is a good Con- to pay over sideration. Adjudged int. Wheatley & Delay. Low, Cro. Jac. 667. Palm. 281.

B. is indebted to A. 20*l.*. and C. is indebted to B. 20*l.*.  
 C. is indebted to B. 20*l.*.  
 C. promises to pay A. in Consideration of Forbearance 4 Days, &c.

If B. is indebted to A. 20*l.* and C. is indebted unto B. in the like Sum, and C. promises A. in Consideration that he is content to accept the said Sum by the Hands of C. and to stay for this for Four Days, that he will pay him the said Sum: This is held a good Consideration for A. to maintain an Action upon the Case against C. *Int. Wilmott & Priggett in B. R. Pas. 41 Eliz.*

In Consideration that he would accept him for his Debtor, &c.

*Vide 1 Ven. 153.* like Point adjudged; *Mod. 12. con. 1 Ven. 15.* in Consideration that he would accept him for his Debtor, &c. is no good Consideration, for it does not necessarily imply a Discharge to the other: *Newcomen & Leigh, Stiles 249. Hard. 73.* cited: *1 Ven. 9. arguend. con. Forth & Stanton, 1 Saund. 210. 1 Lev. 262. 1 Jones 87.* adjudged.

C. promises B. in Consideration B. would accept his Promise, and stay, &c. he would pay the Note of A.

But *1 Ven. 9.* A. being indebted to B. gives him a Note directed to C. requiring C. to pay him; whereupon C. in Consideration B. would accept his Promise for the Money, and stay a Fornight, promised, &c. This is not held a good Consideration, for B. might sue A. in the mean time. *Clipsham & Morris, 1 Lev. 248.* & *1 Ven. 9.* adjudged.

*Aliter,* in Consideration B. would procure A's Note to C. to pay.

A. indebted to B. 20*l.* intreats C. to pay B. it, &c.

Again, A. is indebted to B. and C. to A. and C. promises B. in Consideration that B. will procure a Note from A. requiring C. to pay B. then C. will pay, &c. and this is held a good Consideration. *Adjudged, 2 Ven. 71.*

If A. is indebted to B. in 20*l.* and A. comes to C. and intreats him to pay the said 20*l.* to B. and if he will, he promises to repay the said Sum to him again; upon which, C. assumes

sumes and promises to pay the said 20*l.* to *B.* *C.* promises and after does not pay it : *A.* may have an <sup>to pay it, but</sup> Action upon the Case against *C.* upon this <sup>does not,</sup> Promise, this being a good Consideration ; <sup>Action lies</sup> for though he shall not have Benefit by it, yet here was a mutual *Affumpſit*, and so he shall have no Prejudice. *Int. Jones & Witchens, Mich.* 41, 42 *Eliz.* *B. R.* *sed dubitatur.*

But it appears by *Cro. Eliz.* 703. same Case ; *C.* brings an <sup>Action a-</sup> and *Moor* 574. *Pl.* 791. That an Action <sup>against *A.* up-</sup> was brought by *C.* against *A.* setting <sup>on his Pro-</sup> forth the Promise of *C.* to pay *B.* and <sup>mise to re-</sup> that, in Consideration thereof, *A.* affu-<sup>pay, not al-</sup>  
med, &c. This is good ; and though it <sup>ledging that</sup> was not alledged that *C.* had paid *B.* yet <sup>*C.* had paid</sup> since the Promise was reciprocal, if *C.* <sup>*B.* and good.</sup> had not paid *B.* *A.* might have an Action <sup>*A.* in Confi-</sup> against him, and therefore adjudged for <sup>deration that</sup> the Plaintiff. <sup>*B.* will deliver</sup>

If *A.* in Consideration that *B.* will deliver <sup>*A.* in Confi-</sup> to him a Recognizance to read over, assumes <sup>deration that</sup> and promises within six Days to redeliver the <sup>*B.* will deliver</sup> same to *B.* or to pay him 1000*l.* This is a <sup>to him a Re-</sup> good Promise upon which *B.* may have an <sup>cognizance to</sup> Action against *A.* for the Consideration is said <sup>read, promi-</sup> to be sufficient. *Adjudged, Hill.* 28, & 29 *Eliz.* <sup>ver it, or pay</sup> *int. Folly & Preston.* 1 *Leon.* 297. and there <sup>1000*l.* good.</sup> said, that where a Bond is delivered to be rebail'd, it is usual for the Bailor to bring an Action, without any express *Affumpſit*. *Vide Cro. Eliz.* 138.

If he can shew an Obligation wherein he is bound, he will pay, &c. ill.

*Per Cro. Eliz. 67.* it was said to have been adjudged, That if one assumes to another, that if he can shew him an Obligation in which he is bound to him, he will pay him, &c. This is no good Promise. *Vide Gen. Abr. 59.*

A. in Consideration B. will relinquish a Suit, promises, &c.

If A. in Consideration that B. will relinquish such a Suit, assumes and promises, &c. this, it's said, is no good Consideration, for he may relinquish the Suit, and begin again immediately. *Adjudged int. Ross & Moor, Trin. 39 Eliz. Moor 539. Pl. 707. & Cro. Eliz. 561.* But *Cro. Eliz. 869.* same Case cited and denied, and like Point adjudged Con. *Vide Gen. Abr. in Margine.*

B. in Consideration A. will forbear Execution upon an erroneous Judgment, promises to pay, &c. good.

It's said, if A. obtains an erroneous Judgment against B. and B. in Consideration that A. will forbear to take out Execution thereupon, promises to pay the Debt: This Consideration is good, notwithstanding the Judgment is erroneous. *Int. Kite & Smith, Hill, 20 Jac. sed adjournatur. Sed vide 2 Rol. Rep. 495. & Gen. Abr. 60. Pl. 75.*

Upon enlarging J. S. Defendant promised, &c.

In Consideration the Plaintiff would permit J. S. who was arrested at his Suit, to go at large, the Defendant promised, &c. This, it's said, is good, though it did not appear J. S. was legally arrested. *2 Rol. Rep. 390, 495. Yelv. 25, 26. Godb. 358. Palm. 394.*

Lessee, in Consideration of Forbearance to distrain Shocks, promises to pay.

It's said, That if the Lessee, in Consideration the Lessor will forbear to distrain Corn in the Shocks, assumes and promises to pay all such Rent as is Arrear: The Consideration is void, because such Corn is not distrainable. *Stiles 205. Hard. 73. Gen. Abr. 61. Pl. 77.*

But

But *quære*, for such Corn is now distrainable 2.  
by an Act made A° 2 Will. & Mar.

If *A.* and *B.* are Church-wardens of *D.* In Consideration the Bishop, at the Request of Church-wardens, would absolve him, he promised to pay them, &c. good.

and if *C.* at the Prosecution of *A.* and *B.* is excommunicated for not paying a Tax for the Reparation of the Church of *D.* and *C.* in Consideration that the Bishop, at the Request of *A.* and *B.* would absolve him, assumes and promises to pay unto *A.* and *B.* so much: If *C.* is accordingly absolv'd, *A.* and *B.* may have an Action upon this Promise against *C.*

for it cannot be intended but the Absolution was at the Instance of *A.* and *B.* and by the Reason of the Promise to pay them the Money. *Adjudged, Trin. 28 Car. 2. int. Curtis & Collingwood. 1 Ven. 297. 2 Keb. 350. & 2 Lev.*

119. Same Case adjudged, the Consideration there being, That the Bishop would absolve the Mother of the Defendant, at the Request of the Defendant, which the Bishop would not have done, if the Plaintiffs had not accepted the Promise of Payment. *Vide Gen. Abr. 61. Pl. 82.*

If *A.* be in Execution at the Suit of *B.* and *C.* a Stranger, comes to the Wife of *B.* and the Wife of *B.* that if her Husband would discharge *A.* out of Execution, he will pay the Debt at such a Day to *B.* if *A.* does not pay it before: And after this, *B.* comes home, would pay and his Wife acquaints him with the said *A/*- the Debt to *B.* *Assumpfit*, and he agrees thereto, and upon this, if, &c. Husband agrees, &c.

discharges *B.* out of Execution: This is said to be a good *Assumpfit*, upon which *B.* the Husband may have an Action, though the Action lies. Husband gave no Command or Authority before to the Wife to make an Agreement, for the Agreement to it after is sufficient. *Ad- judged,*

judged, 27 H. 8. 24. Tatam's Case. Vide Cro. Eliz. 61. & Godb. 361. like Point adjudged Gen. Abr. 65, 66.

J. N. promises J. D. that if he will suffer his Debtor J. S. to go at large, J. N. will satisfy, &c.

Afterwards J. N. revokes, &c. yet Ac-  
tion lies, &c.

In Considera-  
tion Obligor  
will pay the  
Money with-  
out Suit,  
Obligee pro-  
mises to deli-  
ver up the  
Bond.

S. and B.  
bound to J. S.  
to pay to J. D.  
B. promises S.  
that if he  
would pay all  
to J. S. he  
would pay S.  
one Moiety ;  
and good.

If J. S. is in Execution for 10 l. at the Suit of J. D. and J. N. comes to J. D. and promises him, That if he will suffer J. S. to go at large, he himself will satisfy him ; to which, J. S. agrees : Though J. N. afterwards, and before J. D. has done any Thing by Force of the Promise, comes to J. D. and discharges him from delivering him out of Custody, and that he will not stand to his Promise, but revokes it, yet will this be no Bar in an Action upon the Case upon the Promise. Adjudged upon a Demurrer, Pas. 16 Jac. B. R. int. Harford & Pile. Vide Cro. Jac. 483. same Case adjudged ; and 2 Rol. Rep. 19, 39. same Point adjudged.

If a Man is bound in an Obligation of 40 l. for the Payment of 20 l. and the Obligee promises the Obligor, That in Consideration he will pay the Money without Suit, that after Payment he will deliver up the Bond to him : This is a good Consideration to maintain an Action, if the Obligee does not perform his Promise. Hill. 41 Eliz. & Pas. 14 Jac. 1 Rol. Rep. 355.

If S. and B. are bound in an Obligation to bound to J. S. J. S. to pay a certain Debt to J. D. and the Obligation being forfeited, B. says and promises to S. That if he will pay all the Principal to J. S. he would pay S. one Moiety ; and thereupon S. pays all accordingly to J. S. Now if B. will not pay one Moiety to S. he may have an Action against B. upon the Promise ; for though he might have been charged by the Obligee for the whole Debt, yet the Pay-

Payment thereof without Suit, and in Discharge of *B.* was held a good Consideration to maintain an Action: And so adjudged in Error, *Pas. 14 Jac. int. Bagg & Slade. Vide I Rol. Rep. 354. & 3 Bulst. 162.*

If *A.* and *C.* are bound jointly and severally to *D.* in a Bond of 80*l.* for the Payment of 47*l.* and *A.* gives a Counterbond to *C.* to pay the Money to *D.* at the Day, but does not, by which the Principal, Bond, and Counterbond, are forfeited; and hereupon *D.* sues *C.* and has Judgment against him; but before the Judgment, *A.* had paid to *D.* 7*l.* Parcel of the said 47*l.* Principal Debt; and after the said Judgment, in Consideration of the Premisses, and that the said *A.* at the Instance and Request of *D.* then paid to *D.* 47*l.* principal Debt, the Defendant promised not to proceed in the said Suit against the said *C.* This is said to be a good Consideration: So that if he takes *C.* in Execution after upon the Judgment, an Action upon the Case lies, though *A.* had forfeited the said Bond of 80*l.* and so was bound thereby to pay more than he did.

*A.* and *C.*  
bound to *D.*  
in 80*l.* *A.*  
gives *C.* a  
Counterbond.  
Both Bonds  
become for-  
feited. *A.*  
paid *D.* Par-  
cel. *D.* sues  
*C.* and had  
Judgment;  
and in Con-  
sideration *inde-*  
and of 47*l.*  
paid to him  
by *A.* *D.* pro-  
mised not to  
proceed a-  
gainst *C.*

Yet it was a good Consideration for *D.* to have the Money in his Purse, being before but a Chose in Action. *Adjudged in Error in Camer. Scaccar. Hill. 10 Car. int. Stubbard & Farrer. Et Intr. Trin. 9 Car. Rotul. 20. Vide I Lev. 198, 199.* See the late Act for Amendment of the Law, upon bringing Principal and Interest into Court, &c.

A good Con-  
sideration for  
*D.* to have his  
Money in his  
Purse.

See

*Vide Stat. 4 & 5 Ann. Reg.* See the late Act for Amendment of the Law, concerning Payments to be pleaded upon Bonds, though not strictly made, and the Courts giving a Discharge to the Defendant, upon bringing Principal, Interest, and Costs, into the Court, &c.

*A. recovers 7 l. against B. afterwards, in Consideration of 4 l. more paid, promises to forbear, and to release, &c. good.*

If *A.* recovers a Debt and Damages to 7 l. against *B.* and after *A.* in Consideration of 4 l. paid him by *B.* assumes and promises that he will forbear further to prosecute his Suit, and that he will release it; and also that he promises to forbear, and his Attorney will acknowledge Satisfaction of the Sum recovered: Though this 4 l. cannot be any Satisfaction of the 7 l. due by the Record, yet the Payment and Acceptance of the 4 l. is a good Consideration to raise an *Affumpfit*, whereby to compel him to discharge the 7 l. *Adjudged int. Pinowe & Reynolds, Mich. 37, 38 Eliz. B. R. Vide Moor 412. Pl. 564. Et Cro. Eliz. 429.*

*B. promises, in Consideration A. would pay the 30 l. due upon Bond, that he will accept it, and deliver up the Bond: A good Consideration.*

So if *A.* be bound in an Obligation of 60 l. to *B.* conditioned for Payment of 30 l. at a Day to come; and after the Day of Payment, the 30 l. not being paid, in Consideration that *A.* would pay the 30 l. to *B.* in Satisfaction of the Bond, *B.* promises that he will accept it in Satisfaction, and that he will deliver up the Bond: If *B.* does not deliver up the Bond to *A.* he may have an Action upon this Promise; for though legally, after the Obligation forfeited, 30 l. can be no Satisfaction of 60 l. yet to have the Money in his Hands without Suit, is a good Consideration to maintain an Action upon this Promise. *Adjudged, Trin. 15 Car. int Rawlins & Lockey. Vide 1 Lev. 198, 199. 1 Len. 238. Cro. Eliz.*

194. Cro. Car. 8. Huc. 76. Vide the Statute, ut supra, to inforce a Discharge.

If a Man binds himself and his Heirs in a Promise by Bond, and dies; and after the Obligee sues an Heir, (sued upon his the Heir upon the Bond, who had no Assets Ancestors descended to him; and the Heir says to him, Bond, and has That if he will not sue him, he will pay him ving no Af- the Money: This is held no Consideration so sets) in Con- as to maintain an Action, because he was not sideration of chargeable without Assets. *Paf. 42 Eliz. B. R.* Forbearance. *Vide 4 Leon. 6. 3 Leon. 67, 68.*

*Note,* That in an *Affumpſit* against an Heir What ought upon such a Promise, it must be exprefly to be exprefly shewn, That the Heir was bound, else shewn. it ſhall not be intended, though after a Verdict. *2 Saund. 136. 1 Ven. 159. Syd. 248.*

But in ſuch a Case where the Plaintiff de- When upon clared, That the Defendant, in Conſi- Promise it deration that the Plaintiff would deliver shall be in- the Bond to him, and discharge the Debt, tended the promised, &c. it was held a good Decla- Defendant ration; and that it ſhould be intended was liable to pay. he was liable, or at leaſt that the Dis- charge ſhould be made to him that was ſo. *1 Syd. 31. Et 1 Lev. 165.*

If in an *Affumpſit* the Plaintiff declares, In Conſide- That the Defendant, in Conſideration that ration the the Plaintiff would forbear him one Week, Plaintiff assumed, &c. and avers, That he did forbear would for- him one Week, but ſays not one Week follow- bear the De- ing; yet adjudged a good Declaration, for Week, he it must neceſſarily be intended ſo. *Int. Tenacy promised, &c. & Brown, Hill. 34 Eliz. Cro. Eliz. 272.*

If

In Consideration the Defendant was indebted, and the Plaintiff had given Day until, &c. he promised to pay, &c.

If in an *Assumpſit* the Plaintiff declares, That whereas the Defendant was indebted to the Plaintiff in 30*l.* the Defendant, in Consideration that the Plaintiff had given Day to the Defendant until, &c. did affume and promise to pay, &c. This is said to be a good Declaration, without shewing for what the Defendant was indebted; for the Debt is not in question: And though it be true there must be a Debt to make this a good Consideration, yet that is allowed in the Promise, being actual. Adjudged, after Verdict for the Plaintiff, *Mich. 9 Jac. int. Woolaston & Webb. Hob. 18. Gen. Abr. 69. Pl. 2.*

If it be to pay the Costs of Suit, Plaintiff ought to shew them.

If it be upon surceasing a Suit, that the Defendant promised to pay the Costs of Suit, the Plaintiff ought to shew what Costs he had expended. *Int. Fox & Goodson, Cro. Eliz. 276.* Yet notwithstanding after Verdict it was adjudged for the Plaintiff; but it had been otherwise upon a Demurrer.

## C H A P. XII.

*De Indemp' conservand'.*

**I**F in an *Assumpſit* the Plaintiff declares, That Upon a Pro-  
mise where-  
whereas the Plaintiff was bound in a Bond  
to *J. S.* the Defendant, in Consideration, &c.  
assumed and promised to save the Plaintiff  
being bound  
harmless from the said Bond; and says, That  
for the De-  
although the Plaintiff upon the said Bond was  
fendant to  
impleaded, and a Recovery *per debitam Legis*  
*formam* thereupon had, yet the Defendant had  
*& recuperasset.* *Int. Foster & Clement, Pas. I*  
*Jac. Cro. Jac. 10, 11. Vide Aſt. Ent. 37. Gen.*  
*Abr. 75. Pl. 4.*

If in an *Assumpſit* the Plaintiff declares, up- To save  
on a Promise to save the Plaintiff harmless, harmless, and  
and also to pay 2 d. for every Farthingworth to pay 2 d.  
of Damage the Plaintiff shall sustain, &c. the for every  
Plaintiff in his Declaration must shew how Farthing-  
many Farthings Damage he sustained. *Ad-* worth of Da-  
*judged int. Coveny & Wooden, Pas. 10 Jac.*  
*2 Bul. 37, 38. Gen. Abr. 76. Pl. 10.*

**I**f. Debt upon a Bond made to a Bayliff of To save a  
a Liberty, to save him harmless concerning Bayliff of a  
certain Goods which he had levied by a War- Liberty  
rant, and as the Goods of one *K.* and had de- harmless, up-  
livered them to the Defendant upon Request, on delivering  
who made Claim to the said Goods, and re- Goods which  
turned *nulla bona*, &c. *Bar per non damnificatus, &c.* he had levied,

Repl.

Repl. and shews how he was damaged, the Defendant demurr'd, and Judgment was given for the Plaintiff. *i Lut.* 593. &c. and the Bodh was held lawful; but upon the Offer of the Defendant to pay as much as the Plaintiff was damnified, Execution was stay'd, and referr'd to the Prothonotary to compute, &c.

*Non damnificat*, Repl. he was forced to retain an Attorney.

Repl. That the Obligee prosecuted him to an *Exigent*, &c.

The Obligee endeavoured to arrest him, so that he durst not attend his Business.

To *non damnificat*, Plaintiff says he was sued, and forced to retain an Attorney; he is not, it's said, bound to give the Defendant Special Notice. *Siderf.* 442. *int. King & Atkins, sur Demurr.*

*ff.* To the like Bar the Plaintiff replies, That the Money being unpaid, the Obligee prosecuted the Plaintiff to an *Exigent*, which the Plaintiff superseded. *i Mod. Instrand.* 195. *Vide Cro. Eliz.* 264. Judgment against the Plaintiff after *Exigent*, immediately upon the Judgment given he was damnified.

*ff.* The like Bar, Repl. that the Money was unpaid, and the Obligee did endeavour to arrest the Plaintiff, so that he durst not go about his lawful Business, & sic *damnificatus*: Rejoinder, that they had no Notice, and Plaintiff demurr'd. *i Saund.* 114. &c. And it was the Opinion of the Court, That the Rejoinder was a Departure from the Plea; and as to Matter in Law, it was said in the Case, That the Plaintiffs had assigned no Breach, &c. and upon the Matter in Law, the Court were of Opinion against the Plaintiffs, and advised to discontinue, but they would not; yet 'tis said they afterwards gave Judgment for the Plaintiffs. *Vide i Saund.* 117. &c. *Vide postea.*

The like Bar. Repl. the Money was not *simile*; with paid, whereby the Plaintiff was chargeable, a Rejoinder, and durst not attestid his Business. Rejo. That the Money was tender'd, and refused, *absque hoc*, that the Plaintiff was chargeable; and fused, &c. the Plaintiff demurr'd, and Judgment for the Plaintiff; for the saying he could not attend his Business, is sufficient. 3 Keb. 336. Vide 5 Rep.

24. 3 Bul. 233. &c.

Vide Clift's Entries 147. That no Request or Bar, That no Notice in Writing was made to keep him indemnified; and as to Notice, vide 2 Keb. 529, 609, 642. Cro. Eliz. 613. Sjd. 71, 442.

*ff.* The Condition was to save the Plaintiff harmless, (upon releasing the Defendant out of Prison, then being in Execution at his Suit) from all Persons that should trouble him concerning such Releasing. Bar, That upon a Plaintiff levied in the Court of York against N. the Defendant and one H. was Bail: That the Plaintiff had Judgment against N. and the Bail; and the Defendant being taken in Execution thereupon, the Plaintiff discharged him, and that he was not damnified by the Releasing. The Plaintiff confesses the whole Matter in the Bar; but says, That before the Defendant was taken in Execution, H. the other Bail, together with another Person, became bound unto the Plaintiff for Payment of the Money upon the Judgment; and thereupon the Plaintiff promised H. That he would take the Defendant in Execution, and would not release him without the Consent of H. That the Defendant being taken in Execution, the Plaintiff released him; wheretupon H. sued the Plaintiff upon his Promise, and recovered, and so the Defendant was damnified by the

Repl. That the Plaintiff had before-hand promised H. one of the Defendant's Bail; not to release Defendant.

L

Re-damnification:

And that having released him, H. sued him, &c.

Release. The Defendant demurr'd; and *Hobart* and *Winch* maintained, That the Action well lay; and Judgment was given for the Plaintiff. *Vide Winch*, Ent. 271, 280. *Et Hob. Rep.* 269. *Wilden and Wilkinson.*

Also it was here said, That by the Words Damages, is not only intended Damages which arise directly by the Release, but to any other collateral Act dehors, as was the said Promise. *Vide 1 Rol. Abr.* 431, 432.

*Non damnificat'*  
to his Bail;  
Repl. That  
he did not ap-  
pear, *per quod*,  
*&c.*

The Defendant pleads *non damnificat'* to his Bail; Repl. That the Defendant did not appear, *per quod* the Sheriff did prosecute him *per debitum Legis cursum*: This is a sufficient Breach, here being a Suit alledged. 2 *Keb.* 625.

*Simile.*

The like Plea, and Repl. *non comperuit*, Rejo. that the first Bond given was void *per 23 H. 6.* and that there was no *Latitat* issued forth *per Cur'*: This is a Departure; but notwithstanding the Bond, the Party is not estopt to say there was no *Latitat*; but the Non-Appearance is a Damnification, be the Bond void or not. 1 *Keb.* 59, 98.

The Plaintiff  
might be  
damned  
before the  
Payment.

Defendant pleads he paid the Principal, *J.S.* 20*l.* in Satisfaction of 53*l.* and so kept his Bail harmless: The Plea adjudged ill, because the Plaintiff might be damned before the Payment, to which he doth not answer. *Cro. Eliz.* 156.

When he  
ought to dis-  
charge another against *J.S.* 'tis not sufficient  
charge by Re-  
lease. By 22 *Ed. 4.* 40.<sup>b</sup> upon a Bond to dis-  
charge him harmless, he ought to  
discharge him by Release or otherwise.

*ff. Debt*

*ff.* Debt upon a Bond bearing Date the Bar, That 10th of January, 33 Car. 2. with a Condition the Bail was to save the Plaintiffs harmless, being Bail for one L. at the Suit of W. Defendant pleads, *quod Quer' non damnicat*, &c. Repl. That the said W. in Mich. Term, 33 Car. impleaded the said L. in the Exchequer, and the Plaintiffs in Hill. Term, 33 & 34 Car. 2. became Bail for him: That W. had Judgment against L. and that W. died intestate; and that the Bishop of L. granted Administration to J. and that L. had not paid the Money recovered against him, but that they had paid it to the Administrator: Defendant demurs: 1 Lut. 399. &c. And Judgment pro Def. upon the Exceptions following made to the Repl.

1. That it appears upon Record, that W. was dead before the Judgment. Exceptions taken.
2. That the Judgment being at Westminster, the Letters of Administration granted by the Bishop of L. were void; and by Consequence the Money paid by the Plaintiff to G. was in his own Wrong.
3. That it appears the Bail mentioned in the Condition could not be the same Bail which is mentioned in the Repl. for the Condition recites, That whereas the Plaintiffs are become Bail, and the Bond bears Date the 10th of January, 33 Car. 2. which was before Hillary Term; and the Repl. says, That the Plaintiff became Bail in Hillary Term, 33 & 34 Car. 2. which was after the Making of the Bond. Vide 1 Lut. 401. Et Judic. pro Def.

Judgment pro  
Def.

Breach as-  
signed, and  
County omit-  
ted.

Things plea-  
ded in Canc'  
*apud Westm'*.

Damage al-  
leged in  
Canc'.

Plaintiff ex-  
hibited a new  
Bill, but took  
out no Pro-  
cess.

When Defen-  
dant ought to  
plead *non dam-  
nificat'*.

Defendant  
says, he de-  
frayed all  
Charges; he  
ought to  
shew how,  
*&c.*

The Defendant pleads *non damnificatus*; Plaintiff replies, and shews a Breach on the Defendant's Part, wherein he was damnified: Defendant demurs, because the Breach was assigned to be at *Westminster*, and doth not shew in what County *Westminster* is, and good. *Stiles, P. 142. Neffson ver. Tomson.*

And it is noted, That where a Man pleads any Thing out of *Chancery*, or a Thing to be done in *Chancery*, he ought to shew the same certainly, and to say *in Canc' apud Westm'*, otherwise upon Issue no Venue can arise.

*2 Bul. 19. Yelv. 226. 1 Rol. Abr. 430.*

A Plaintiff alledgedeth Damage in Suit by a Legatee in *Chancery*; Defendant demurr'd, and Judgment for the Plaintiff. *1 Keb. Hill. 14, 15 Car. 2. P. 464.*

It was awarded, That the Obligor should cease his Suit in *Chancery*; but the Obligor exhibited a new Bill, and pray'd Process, but took out none: This was held no Forfeiture of the Condition; for he was at no Damage by this. *1 Rol. Abr. 432.*

Upon a Bond to discharge and save harmless, in such Cases the Defendant ought to plead *non damnificat'*; for that he hath saved him harmless, doth imply that he was damnified. *1 Keb. 379.*

The Condition was, That whereas the Plaintiff was obliged in such Obligations for the Defendant, that if he were charged or molested in his Body or Goods for those Obligations, he would within a Month satisfy him for it. Defendant saith, he paid him such a Sum for all his Charges within a Month: 'Tis no Plea; for he ought to shew how the Plaintiff was molested, and that he had satisfied so much,

much, or that he was not molested. Cro. Eliz. 393. Hutchinson & Lawson.

The Condition was to save harmless from all Obligations which he had entered into for him: Defendant pleads, *quod exoneravit & indem' conservavit* from all the Obligations, and shews not from what; and yet good, because there might be many, and so to avoid Perplexity of Pleading: Yet because he pleaded *not quomodo exoneravit*, but generally, the Plea was adjudged ill. Cro. Eliz. 916. See after. He ought to shew how in such an affirmative Plea. *Aliter sur non damnificat*.

The Condition was to save the Obligee <sup>Simile of a nomine pænae.</sup> harmless of a *nomine pænae* against M. To plead he had saved him harmless, and not to shew how, is not good. Had he pleaded *non damnificatus* in the Negative, it had been good. Winch. Rep. 9. Et Cro. Jac. 634.

Debt upon a Bond to save the Plaintiff Upon a Bond  
harmless from certain Mariners Tickets deli- to save harm-  
vered to the Defendant: Bar. That he had less from Ma-  
saved him harmless: Repl. That he was ar- riners Tic-  
rested, &c. and had paid 20 s. for his Dis- kets.  
charge: Rejo. That the Plaintiff had falsely  
procured himself to be arrested; with a Tra-  
verse, That he was arrested *alit'*; and the  
Plaintiff demurs, and Judgment was given  
for the Plaintiff. Vide 1 Lut. 422, &c.

Defendant pleads, that at the Day of Pay. That he was  
ment he was going *ad solvend'*, and that the going to pay,  
Plaintiff, by Covin betwixt him and a Stran- and Plaintiff  
ger, caused the Defendant to be imprisoned arrested him.  
till after Sun-set: It was adjudged an ill Sur-  
mise, and no Bar. Cro. Eliz. 672.

Surety, to save the Penalty, paid at the Day; and not needful that he should be arrested.

*Implication  
of non damnifi-  
catus.*

Counterbond forfeited, no Damnification.

*Alietur contra.*

Breach by a *Latitat* sued out, &c. and says not *prout patet per Re-*  
*cord'*; ill.

*B.* was bound with *K.* for the Payment of 200*l.* to *A. B.* If therefore *K.* should save harmless *B.* of all Suits, Quarrels and Demands touching and concerning the said Bond of 200*l.* then, &c. — *B.* came to the Place of Payment at the Day, and perceiving no Person there present to pay the 100*l.* for *K.* he, to save the Penalty of his Bond, paid the 100*l.* to *A. B.* and so brought his Action upon the Counterbond. The Defendant pleaded *non damnificatus*: The Plaintiff replied, and shew'd the Special Matter; and the Defendant demurr'd; and adjudged for the Plaintiff, for it was Harm to him; and it was not needful for the Plaintiff to be arrested or sued: And this Plea of *non damnificatus* implied, That he had saved him harmless, as by Release, Payment, or otherwise. *Vide Broughton's Case*, 5 Rep. 24.

*Vide 1 Rol. Rep.* cited in *Freeman and Sheen's Case*, where 'tis said, If a Man be bound to preserve his Surety without Damage of an Obligation, if he suffers the Obligation to be forfeited; yet this is not any Damnification; and that by this the Counterbond is not forfeited: But see 3 *Bulst.* 233. the Money not being paid at the Day, is a present Forfeiture of the Counterbond; for he hath put the Plaintiff in Danger of being arrested, and is a present Damage. *Vide 10 E. 4. 27, 28.*

Defendant pleads, he caused the Party with whom the Plaintiff was bound to submit himself to Prison, and that the Plaintiff was not damnified. Plaintiff confesses the Bar; but says, That a *Latitat* was sued out against him, and so he was forced, &c. Defendant demurs, the Plea was said to be ill; and that the Plaintiff

Plaintiff had also alledged an ill Breach. He saith not, that he took a *Latitat prout patet per Record'*: The Words in the mean time refer to the last Words in the Condition; and Judgment was given for the Defendant, *int.*

*Young & Petit. Stiles 356.*

Defendant pleads, That *J. S.* the Creditor sued the Plaintiff on the Bond, and had Judgment; but before Execution, he delivered the Money to the Plaintiff to satisfy it: 'Tis no Plea; for by the Judgment, the Party is damnified, and the Costs are not paid. *Cro. Eliz.*

396. 1 *Rol. Abr.* 432.

The Defendant pleaded, That the Bond to *J. S.* (wherein the Plaintiff was bound with him as Surety) was upon usurious Contract, and so pleads the Statute against Usury; *& sic non damnificatus*: This was said to be no Plea;

for he ought to save his Surety harmless: And it shall not be intended that the Surety knew of the usurious Contract. *Cro. Eliz.* 588, 643.

3 *Leon.* 63. 2 *Leon.* 166.

That before Execution, he delivered the Money to the Plaintiff, &c.

The Statute saith, All Bonds and Collateral Sureties made for the Payment of Money lent upon Usury shall be utterly void: But here the Counterbond was not for the Payment of the Money lent; but for Indemnity of the Surety.

The Surety cannot plead, That the Principal was kept *in dures*, till he and the Defendant entered into the Bond, though the Principal might plead it; for none shall avoid his own Bond for the Imprisonment or Danger of any other than himself only. *Cro. M.* 5. *Fac. 187. 1 Brownl.* 54.

The Surety may not plead *per dures*.

Two bound jointly and severally, they are both Principals, &c.

*Writ de Contributione facienda.*

Bond decreed in Canc'.

Upon a Bond by a Collector of the New-River Company, to save the Plaintiff harmless.

Defendant pleads he had discharged him, &c. he ought to shew how.

If one is bound with another as his Surety jointly and severally, they are both Principals, and neither Pledge or *Fidejussor* for the other; and one cannot have the *Writ de Plegis acquitandis* against the other, because such Writ lies not but where one is named expressly as Surety in the Bond. *Hob. 53. Dyer 370.*

But the Custom of London is, If many are bound as Sureties, if the Principal fail of Payment, and one of the Sureties be sued upon this Obligation, he may have a *Writ de Contributione facienda* against the other Sureties.

*2 Leon. 166, 167. Moor, n. 266.*

*Note.* It's said one Surety may pay the Money, and have the Bond decreed to him in Chancery. *Vide Latch. 170.*

Debt upon a Bond, with a Condition to save the Plaintiff harmless from another Bond, in which the Plaintiff was bound for the Defendant, as Collector of the Revenues of the New-River Company. Bar, That the Plaintiff was not damnified: Repl. That the Defendant had received 1300*l.* &c. and had not paid it according to the Condition, whereby he was threaten'd to be arrested; and to prevent it, had paid 250*l.* &c. Defendant demurs, and Judgment for the Defendant. *Vide 1 Lu. 470. &c. Et vide Bro. rediriviv. from 204. to 209. for the Pleadings therein, &c.*

Upon a Condition to indemnify the Plaintiff and his Lands from an Annual Rent, Defendant pleaded, That from the Time of making the Bond *hucusq;* he had discharged and indemnified him: The Plaintiff demurs, he ought to have shewn how he discharged him, it being a Plea in the Affirmative: Had he pleaded

pledged *non indemnificat'*, it had been good.

*Cro. Jac. 634. Vide ante & postea.*

The High-Sheriff brought an Action against To a Sheriff's the Under-Sheriff. Defendant pleaded, he Bond by an saved him harmless: Plaintiff demurr'd; and Under-Sheriff, he ought the Plea adjudged ill; for he may save him to have plead- harmless in many Things, and yet the Plain- ed *non damni-*  
tiff may be damnified in some other: He *ficiatus*.  
ought to have pleaded *non damnificatus*. *Stiles*  
*P. 23 Car. 1. Fo. 16. int. Wrotb & Elsey.*

To save harmless from Escapes, Defendant Shews not says, he saved him harmless; but says not how, &c.  
how: It had been ill on Special Demurrer, aided by Ge-  
but aided by General Demurrer. *2 Keb. 629.* neral Demur-  
*3 Keb. 198.* rer.

*Note, in Alleyn, P. 25.* it's said, the Condi- Where the  
tion of a Bond to save the Obligee harmless, Bond extends  
concerning his buying of certain Goods at only to the  
such a Price, extends not to the Price, but to Title.

Debt was brought upon a Bond given to Upon a Bond Church-wardens by the reputed Father of a given to save Bastard Child, to save the Parish harmless. the Parish Defendant pleads *non damnificat'* generally: harmless,  
Plaintiff replies, That none had taken Care,  
by the Space of a Month, for the Child's Maintenance; and that therefore they were forced so to do, and paid 4*s.* Defendant rejoins, That he would have provided, and offered so to do, as well to the Plaintiffs, as the Parishioners, but they would not permit him; yet in their own Wrong, and against his Will, put the Child to Nurse, and paid the 4*s.* The Rejoin-  
The Rejoinder was adjudged a Departure der being a  
from the Plea in Bar; and that he should Departure,  
have said so at first in the Bar, and therefore ought to have been pleaded  
*Judg- at first.*

Judgment for the Plaintiff. 1 Saund. 83. Vide Siderf. 444: Mod. Rep. 45. Richards & Hedges.

Upon a Ju-  
stices Order  
to keep, &c.

The Condition was to pay 10*s.* Weekly, according to an Order made by the Justices, for keeping a Bastard Child. The Defendant pleads, the Justices made no such Order; and Judgment for the Plaintiff: But it had been otherwise, if it had been to pay *secundum ordinem faciend'*; for the one is an Estoppel to the Defendant, the other is Executory. Vide Latch. 125. Fermin & Randal; & Noy. 79.

*Nul tiel Record*  
a good Plea  
to an Order  
of Sessions  
pleaded.

The Condition was to keep the Parish harmless from a Bastard Child. Defendant pleads, he had saved the Parish harmless; but shews not how: Plaintiff replied, That the Parish was warned before the Justices of Peace at the Sessions, and was there ordered by Record to pay so much for the Keeping of the Child. The Defendant pleads *nul tiel Record*: The Plaintiff demurs; and the Plea of *nul tiel Record* was allowed a good Plea, because an Order of Sessions of Peace is a Record: But Judgment for the Plaintiff, because the Defendant's Bar is ill, in that he hath pleaded in the Affirmative, and shews not how. *Non dam-nificatus* had been good; and 'tis not helped by Demurrer, being Matter of Substance.

March 121. n. 200.

Bar in the  
Affirmative,  
and shews not  
how; ill.  
Debt upon  
a Bond to  
pay Plaintiff  
10*l.* (she be-  
ing big with  
a Bastard  
Child) if she  
saved T. S.  
harmless, &c.

Debt on Bond to pay to the Plaintiff 10*l.* provided she saved one T. S. harmless, &c. by reason the Plaintiff was with Child. Bar, That she the Plaintiff swore before a Justice, that T. S. was the Father; for which, T. S. was taken up, and forced to find Bail. Repl. That the Plaintiff was delivered of an Infant, which was a Bastard, begotten by T. S. and that T. S. was not damnified by reason of

main-

maintaining the said Infant. The Defendant demurs; and Judgment for the Plaintiff, for that it was not the Intention of the Bond to save him harmless from any legal Prosecution, which was not in the Power of the Plaintiff or Defendant. *1 Lut. 667. &c.*

*Non damnificat*, by placing *A.* in a Cottage: Breach where  
Repl. That the Inhabitants were forced by a the Inhabi-  
Rate of Justices, &c. to provide Necessaries: tants were  
Adjudged good, without shewing any parti- charged by a  
cular Inhabitant was charged. *1 Keb. 392.* Rate of Justi-  
ces.

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## CHAP.

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## C H A P. XIII.

*Deceipt; & de Imposition' Crimin', &c.*

Where a Stranger causes himself to be sworn upon a Jury.

Where one Juror labours another.

Where a Stranger gives false Evidence.

Procuring one to be indicted in a Foreign County.

For indicting one, upon good Cause of Suspicion.

**I**F upon an Issue between *A*, and *B*. a Stranger, that was not returned of the Jury, causes himself to be sworn in the Name of one that was returned of the Jury, and a Verdict is given for *B*. *A*. may have an Action upon the Case against the Stranger. *March 81.* So an Action lies against a Juror that labours another unduly, &c. *Palm. 315. Vide Moor 6. Pl. 22. Cro. Jac. 191.*

But it's said, That if in an Issue between Two, a Stranger gives false Evidence against One, *per quod* the Verdict passes against him; yet no Conspiracy lies, because that which is given in Evidence, is not upon Record. *Adjudged, 39 E. 3. 13.*

Where upon the 8th *H. 6. Cap. 10.* for procuring the Defendant to be indicted or appealed in a County in which he was never conversant, in which Action he shall recover treble Damages. *Vide Kelw. 21. P. N. B. 115. 3. Conspiracy 38. 3 Inst. 110. Vide Stat. 7 H. 5.*

If a Man hath good Cause of Suspicion, that a Felony is committed, and that *J. S.* is guilty thereof, and thereupon takes the Ordinary Course of Law, and causes him to be indicted, though no Felony was in Truth committed, yet no Action upon the Case lies against him, because he did it in Prosecution of Justice; for otherwise every one will be deterred

terred from prosecuting in such Manner.

14 *Jac. B. R. int. Wells & Wells.* 1 *Rol. Rep.*

438, 439. 3 *Bul.* 284, 285. *Ley.* 60, 61. &c.

But otherwise, if I find my Cattle in the *Ali' where*  
Hands of a Butcher, knowing them to be no Cause, &c.  
bought lawfully in a Market, and yet of Ma-  
lice cause him to be arrested and indicted ;  
upon which an *Ignoramus* is found. *Vide Bridg.*

60, 61.

But if the Daughter of *J. S.* complains to him, That *J. D.* hath ravished her ; upon which, he complains to a Justice of Peace ; and upon his Binding him over, indicts him : Though no Rape was committed, yet no Action lies against him ; inasmuch as he, being the Father, had good Cause of Suspicion upon the Complaint of his Daughter. *Hill.* 14 *Jac. B. R. int. Cox & Wirral.* 1 *Rol. Rep.* 439. 3 *Bul.* 286. *Tely.* 105, 106. *Cro. Jac.* 193, 194.

So if a Man takes my Goods, and sells them to a Broker in *London* ; and I supposing them to be stolen, and finding them in the Possession of the Broker, demand of him how he came by them : If he gives an uncertain Answer, which gives me good Cause of Suspicion, for which I complain of him to a Justice, and upon his Binding him over, indict him ; though the Goods were not stolen, and so no Felony committed, yet no Action lies against me. *Adjudged int. Chambers & Taylor,* 1 *Rol. Rep.* 439. 3 *Bul.* 286. *Cro. Eliz.* 900, 901.

What shall be said a good Cause of Suspi- A good Cause  
cion, and where and how it must be pleaded ; of Suspicion,  
and what shall be said the Taking the ordina- &c. what.  
ry Course of Law, &c. vide *Cro. Eliz.* 70,

134, 871. Cro. Jac. 130, 131. 1 Leon. 107, 108. Kel. 81. b. Moor 600. Pl. 828. 3 Leon. 100, 101. 12 Co. 91, 92. 1 Bul. 149, 150, 151. 2 Bul. 331. 3 Bul. 284, 285, &c. Palm. 316. Ley. 60, 61. &c. Winch. 28, 29. Godb. 406. 3 Mod. 166.

Indictment  
upon a proba-  
ble Cause.

A probable Cause will not excuse a Man for indicting another of a Trespass; for since he might have brought an Action, the Indictment will be intended malicious. 2 Mod. 306, said, where the Defendant was bound over to prosecute. *Vide Cro. Eliz.* 901. *Winch.* 73. 1 Rol. Rep. 438, 439. Ley. 61, 63. 3 Leon. 107. Yet it's said a Writ of Conspiracy lies. 3 Ass. 13. See after.

Imposing Fe-  
lony where  
none was  
committed.

If A. imposes the Crime of Felony upon B. where no Felony was committed, and maliciously causes him to be arrested for it, an Action upon the Case will lie, without alledging any particular Felony of which he was accused. *Adjudged int. Best & Ayer, Hill.* 11 Jac. B. R. *Vide 1 Rol. Abr.* 43. Pl. 3. Raym. 61. 1 Syd. 95. And there said, That it had been adjudged, that such a General Declaration, *quod Crimen Felonie imposuit*, is good: But a *Quare* is there made by the Reporter, because the Charge not being Particular, the Defendant would not know how to defend himself. *Vide 1 Keb.* 388. 1 Ven. 264. 1 Rol. Abr. 115. Pl. 7.

*Quod falso &*  
*invidiose ei*  
*Crimen Felonie*  
*imposuit*, with-  
out saying  
*malitiose.*

In an Action upon the Case, if the Plaintiff declares, That the Defendant intending, *ex Malitia sua propria*, to take away his good Name and Fame, *falso & invidiose Crimen Felonie ei imposuit*, (and not said *malitiose*;) but after 'tis alledged, That he maliciously caused him to be indicted, and upon this to be tried,

and

and then maliciously gave Evidence against him to the Grand Jury, and an *Ignoramus* was thereupon found; though it is, That he *invidi-*

*osus ei Crimen Felonie imposuit*, and not *malici-*  
*osus*, yet all the Declaration being laid toge- Good, the  
 ther, it is well alledged, that the Prosecution whole Decla-  
 was maliciously. *Int. Moor & Rock, Mich. 14*  
*Car. B. R.* and adjudged a good Declaration,  
*Hill. 14 Car.* upon Arrest of Judgment. *Vide*  
*1 Rol. Abr. 113. Pl. 5, & 114. Pl. 6.*

Yet it's said, no Action lies for procuring For indicting  
 one to be indicted of Felony without more, one of Felo-  
 ny, he ought  
 as without averring, that this was maliciously to shew it  
 done, or without shewing, that he was ac- was malici-  
 quitted thereupon; for it may be, that he is ously, &c. or  
 guilty; and an Indictment is the ordinary that, &c.  
 Proceeding of the Law. *Adjudged, Mich.*

*5 Jac. B. R. 1m. Nyn & Naylor. Vide 1 Jones*  
*94. Goulf. 51. Pl. 14. 12 Co. 91.*

*Note.* By the Statute 33 Ed. I. *Conspirators*, are said to be such as bind themselves by Oath, or other Alliance, falsely and maliciously to indict, and falsely to move and maintain Pleas, and such as cause Children within Age to appeal Men of Felony, and retain Men to maintain their malicious Enterprises and this extendeth as well to the Takers as Givers, and and also Stewards and Bayliffs, who by their Power maintain Debates, that concern not their Lords, but other Parties.

If one *falso & malitiose* imposes the Crime of Felony upon another, upon which he is committed to Jayl, and indicted; and also afterwards *falso & malitiose* swears and gives Evidence against him to the *Petit-Jury*, that he stole a certain Thing, and yet he is acquitted; an Action lies against him for this

Where one  
*falso & mali-*  
*tiose* caused  
 one to be in-  
 dicted, &c.  
 and *falso &*  
*malitiose* gave  
 Evidence,  
 &c. to the  
*Petit-Jury, &c.*

malicious Prosecution. *Int. Philips & Shale, Mich. 12 Fac. B. R. per Cur. Vide i Rol. Abr. 113. Pl. 5, 115. Pl. 7.*

*Simile*; and giving Evidence to the Grand Jury, &c.

So if a Man *falso & malitiose* prefers an Indictment of Felony against J. S. to the Grand Jury, and gives Evidence thereupon to the laid Jury upon Oath, that the Matter of the Bill was true, and yet the Jury find an *Ignoramus*, an Action lies against him, shewing all this Matter, and how he gave Evidence upon his Oath, this being falsely and maliciously done. *Adjudged in Error in Scaccario, Mich. 9 Car. Vide Lat. 80, 81, 82. Palm. 315, 317. Winch. 28, 54. Stil. 10, 11, 372. 2 Jon. 20.*

*Simile, tho' the Plaintiff was never acquitted, &c.*

Again, if one Man *falso & malitiose* procures another to be arrested, and indicted for Felony, though he was never acquitted thereof, yet an Action upon the Case lies; for a malicious Prosecution without an Acquittal is sufficient to maintain this Action, though no Writ of Conspiracy without an Acquittal. *Adjudged, Mich. 4 Fac. B. R. int. Marsham & Pescodd. Et 29 Eliz. B. int. Knight & Jerome. Et Pasch. 11 B. R. int. Horwood & Corders. Vide i Ven. 12, 18, 19. Raym. 176. i Saund. 229, &c. Cro. Fac. 130, 131. Latch. 49. Winch. 54. Et Hut. 49.*

*Simile, in Case in the Nature of a Conspiracy, until he was legitimo modo acquietatus.*

If a Man brings an Action upon the Case, in the Nature of a Conspiracy, That he maliciously procured him to be indicted of an Offence, and prosecuted till *fuit legitimo modo acquietatus*; if the Indictment was not good, the Action does not lie, for he was not *legitimo modo acquietatus*; and this Action is all one with a Conspiracy, as to this. *Hunt & Line Case, resolved per Cur. Hill. 8 Car. B. R. Vide 2 Leon.*

1 Leon. 279. 3 Leon. 139, 140. like Point; sed  
adornatur. Godb. 76. same Point. Yelv. 46.  
like Point con. 3 Keb. 141. Stiles 157. con.

If A. causes B. to be indicted for a Common Barretor, upon which Indictment B. is acquitted, he may have an Action upon the Case against A. Admitted int. Messenger & Messenger, Mich. 10 Fac. B. R. Vide Cro. Fac. 32. Yelv. 46. Raym. 180. 1 Ven. 23. same Point said to have been often adjudged. 1 Bul. 185. same Point adjudged con.

For maliciously indicting the Plaintiff for a Malicious Rescous, *sciens* that he was not present, &c. indicting for 1 Syd. 261. no Judgment. Raym. 135. 1 Keb. 881. adjournatur.

So if a Man maliciously causes another to *Simile*, as be indicted for a Common Barretor, without Common Barre Colour, though he be not acquitted, yet it's reter. said an Action lies. Mich. 10 Fac. B. R. 1 Rot.

Abr. 114. Pl. 3.

In Conspiracy the Plaintiff declared, That Upon a Con the Defendants, *Conspiratione habita*, did cause spiracy to in the Plaintiff to be indicted for a Common Barretor, and ea Occasione did cause him to be taken, and in Prison detained, *quousq; &c. se-* cundum Legem & Consuetudinem Angliae acquieta- tus fuit, ad dampnum, &c. and this was held Until acquit- a good Declaration, though not said, That he was *inde acquietatus*, or *de Premissis acquietatus*; for it cannot otherwise be intended; and the Writ never hath the Word *inde*; and the Pre- Need not say, cedents are both Ways. Mich. 7 Fac. Bell (inde) acqui- ver. Fox & Gamble. Yelv. 161. adjudged in Arrest of Judgment. Yelv. 161. Cro. Fac. 230. Vide Cro. Car. 286, 315, 419. same Point, in an Action upon the Case, in the Nature of a Conspiracy, adjudged and affirmed in Error.

M

Cro.

*Simile in Casu. Cro. Fac. 131.* same Point in an Action upon the Case, in the Nature of a Conspiracy, &c. adjudged and affirmed upon Error; but said 'twas otherwise in Conspiracy.

*Quare.*

Whether of Necessity to be shewn, That the Plaintiff was acquitted or not, *Q. Et vide 1 Rol. Abr. 114. Pl. 1, 3.* with the several References.

For preferring a Bill of Indictment by Conspiracy.

*Per Cur'* an Action lies, where laid, That they maliciously, and by Conspiracy among them beforehand, had preferr'd a Bill of Indictment against him for speaking treasonable Words. *Adjudged, upon Arrest of Judgment, Mich. 1 Car.* Vide *Trin. 21 Fac. B. R. Rotul. 651.* in which it was entred, int. Smith & Crawshaw, Spurle & Ward Defendants. *Vide Latch. 79.* & *Cro. Car. 15. 1 Jones. 93, 94. 2 Bulst. 271.* same Case adjudged.

Against Church-wardens, for maliciously presenting him in the Ecclesiastical Court.

It's said, an Action upon the Case lies against Church-wardens, for that they falsely and maliciously, to the Intent to draw the Plaintiff within the Censures of the Ecclesiastical Court for Adultery, presented him there, upon a Fame of his living in Adultery with A. S. *Adjudged in Arrest of Judgment per Cur. 16 Car. B. R. int. Damont, Ruddock, & Sherman.* And though the Declaration was, That they Two conspired to do this, and the one found guilty, and the other not guilty, yet this being but an Action upon the Case, the Action lies, and adjudged accordingly. *Vide 1 Rol. Rep. 108. 1 Rol. Abr. 93. Pl. 18, 111, 112. Pl. 9. Cro. Car. 285. 1 Jones 305.*

And

And though it was alledged, That they made the Presentment before the Archdeacon of S. and did not aver it was within his Jurisdiction, yet the Action lies; for though it is not, being within the Jurisdiction, the Vexation is the greater. *Vide 1 Rot. Abr. 112. Pl. 9.*

Where the  
Vexation is  
the greater.

If A. being Church-warden of B. at the End of the Year gives up his Accounts to his Church-war-Successor, and yet A. is falsely and malici-ously cited by D. into the Ecclesiastical Court to render an Account, and at the Request of D. he is excommunicated for not rendring up his Account, an Action lies against D. notwithstanding this Sentence was given by the Judge. *Adjudged int. Gray & Day, Mich. 32 Car. 2. Raym. 418. 2 Jones 132. Hard. 194, 195. &c.*

den malici-  
ously cited to  
render an Ac-  
count.

Is excommu-  
nicated, &c.

If an Action upon the Case be brought against Three, for that they, *Conspiratione inter eos habita*, maliciously and falsely did accuse the Plaintiff of Felony, and did procure him to be bound to the Assizes, and did there prefer a Bill of Indictment against him, of which an *Ignoramus* was found; and Two of the Defendants plead, Not guilty, and the Third justifies; and they who pleaded, Not guilty, are found Not guilty; and the Issue as to him who justified, is found for the Plaintiff; the Plaintiff shall have Judgment, for this Case differs Action upon the Case differs from a Writ of from a Conspiracy. *Adjudged, Mich. 19 Car. B.R. in. Palke & Dunning.*

Case upon a  
Conspiracy a-  
gainst Three,  
for accusing  
the Plaintiff  
of Felony.

*Unde Ignora-  
mus.*

Cafe for conspiring to arrest the Pl. in a great Action.

Seems it should be Conspiracy, and not Cafe.

Difference.

*Simile*, and Diversity between Felony and Trespass.

That the Def. indicted him, & quod Juratores ignorabant.

Common Form.

Cafe against a Lord in ancient Demesn, for not holding his Court.

Skinner and Gunton, like Cafe, for conspiring to arrest the Plaintiff in a great Action, Raym. 176. 1 Vent. 12, 18, 19. 1 Saund. 228, 229, 230. adjudged per tot' Cur' preter Morton, who was of Opinion, that it was an Action of Conspiracy: And there is a *Nota per Saunders*, That he thought the Plaintiff ought not to have had his Judgment; for that he took it to be a formed Action of Conspiracy, by reason of the Words, *per Conspiracym inter eos habitam*, &c. 2 Keb. 473, 476, 497. Adjudged, nisi Godb. 76. Raym. 180. the same Point adjudged.

That an Action upon the Cafe differs from a Writ of Conspiracy, Cro. Eliz. 701. Godb. 76. Cro. Car. 129. 1 Roll. Abr. 112. Pl. 9. 1 Jones 94.

Diversity between a Writ of Conspiracy upon an Indictment of Felony, and upon an Indictment of Trespass, F. N. B. 116. K. L. 2 Inst. 562. sed vide 1 Saund. 230. That it must be intended Cafe without the Words *per Conspiracym*, &c.

If the Plaintiff declares, that the Defendant caused him to be indicted, &c. *Et quod Juratores dixerunt, quod ignorabant*: This is said to be a good Declaration, and it need not be *Ignoramus*; for it was agreed by the Prothonotaries to be the common Form, either to say, *Quod ignorabant*, or fuerunt *ignorantes*. Adjudged inter Pawlin & Shaw, 2 Jones 20. Vide Gen. Abridg. 211, 212. &c.

If the Lord in ancient Demesn will not hold his Court, out of Malice, &c. the Demandant in a Writ of Right there shall have an Action upon the Cafe against the Lord; for otherways, by such Means, the Lord

Lord at any time might make it Frank-fee, 11

E. 2. *Action sur le Case*, 46. Gen. Abr. 204.

Pl. 23.

But if a Copyholder surrenders to the Use *Alii'* upon a  
of such a one, and the Lord refuses to admit Surrender by  
him, no Action upon the Case lies against a Copyholder.  
*Roll. Rep.* 12. *Jac.* 4. Co. 28.

So if such a Copyholder that is to be ad-  
mitted, prays the Lord to hold his Court, and  
he will not, yet no Action lies against him.  
*Roll. Rep.* 12. *Jac.* But it is otherwise if the  
Surrenderer prays the Lord, &c. for he shall  
have an Action, 2 *Bul.* 217, 336. 1 *Roll.*  
*Rep.* 125.

*Alii'* where  
the Surren-  
derer prays  
the Lord, &c.

And if it be the Custom of a Copyhold. If the Tenant  
Manor, That Surrenders shall be made to one  
of the Tenants of the Manor ; if he will not  
take such Surrender, yet no Action upon the  
Case lies against him, 2 *Bul.* 337. 1 *Roll. Rep.*  
126. *Vide* 5 Co. 84.

of a Manor  
will not take  
a Surrender.

But if a Man brings a Bargain and Sale to  
an Officer to be enrolled according to the  
Statute, and he will not enroll it within six  
Months, an Action upon the Case lies against  
him, 1 *Roll. Rep.* 126. 2 *Bul.* 336, 338.

Where an Of-  
ficer refuses  
to inroll a  
Bargain and  
Sale.

If A. is commorant in Middlesex, and B.  
knowing thereof, *falso & malitiose* lays an  
Action against him in London ; and to the end  
that his Goods should be forfeited, makes a  
Suggestion, that A. is commorant in London,  
and so prosecutes the Suit till A. is outlawed ;  
A. may have an Action upon the Case against  
B. for this Vexation. *Adjudged*, Hill. 7 *Jac.*  
in Scaccario, int. Shosbye, Quer. & Walker &  
Bromlye, Def'. Lane 49, 50. Noy. 23. *Vide*  
Co. Ent. *Act. sur le Case* 42. & 1 *Mod.* 4.

A. lives in  
Middlesex, and  
B. *falso & ma-*  
*litiose* causes  
him to be  
outlawed in  
London.

*A.* recovers,  
and *B.* enters  
upon his Pos-  
session; ac-  
tionable.

If *A.* recovers a Term of Years against *B.* by Verdict, &c. and after *B.* enters upon the Possession of *A.* *A.* may have an Action upon the Case or Trespass against *B.* at his Election. *Adjudged int. Jones & Graves,* Mich. 1654. *Stiles 427. Vide Gen. Ab. 198. Pl. 4.*

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C H A P.

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## C H A P. XIV.

*De Imposition' Crimen Felonie, &c.  
by Words spoken.*

Saying to another, That he is a Thief, has For calling a  
been held actionable. *Mich. 14 Jac. B. R.* Man Thief  
*int. Minors & Liford*; and admitted *int. Coke*  
*& Brampton*, *Mich. 14 Car. B. R.* But there  
it's said the Words were, Thou art a For-  
sworn Whore, Thief. *Vide Dal. 17.* Also there  
said, the old Law was otherwise. *Owen 47.*  
*Cro. Eliz. 857. 2 Bul. 134. Cro. Jac. 114.*

To say to a Man, I charge you with Felo- To say, I  
ny, was held actionable, *int. Basy & Child*, charge you  
*Mich. 5 Jac. B. R. Noy. 124.* So *int. Hodg-*  
*skins & Smith*, *1 Jones 302. Cro. Car. 276,*  
*277. Mich. 8 Car. B. R. Vide 1 Rol. Abr. 43.*  
*Pl. 3, 72. Pl. 10, 49. Pl. 6, 72. Pl. 11, 73.*  
*Pl. 21, 113. Pl. 5.*

So for these Words, I charge you with Fe. *Simile*; and I  
lony; and I charge you, Constable, to ap- charge you,  
prehend him. *1 Rol. Abr. 43. Pl. 3.* But there Constable, to  
is said to be a Diversity where such Words are apprehend  
spoke before an Officer, or he is thereupon him.  
apprehended, and where not. *Vide 2 Rol. Rep.* Diversity.  
*343. Godb. 340.*

General Words spoken in Passion are not General  
held actionable; as to call a Man a Villain, Words spo-  
Rogue, Varlet, and such like. *1 Rol. Abr.* ken in Pas-  
*43. Pl. 7. Cro. Eliz. 857. 4 Co. 15. b.* sion.

Branded  
Rogue, &c.

Rogue of Re-  
cord,

He hath  
stolen Corn  
out of my  
Barn.

Diversity.

*Petit Larceny.*

Malicious  
and seditious.

But to say, You are a Branded Rogue, and have held up your Hand at the Bar, &c. held actionable; for it appears, that he was branded according to the Statute of 1 Jac. Cap. 7. *Vide 1 Rol. Abr.* 43. *Pl. 8. Stiles Rep.* 49. *All. 35.* and there said, If a Branded Rogue wanders again, 'tis Felony; and so the Words put him in a nearer Degree of Felony than otherwise he should be. So for, Thou art a Rogue of Record at O. held actionable; *1 Rol. Abr.* 43. *G. Pl. 8. Stiles 220. Int. Alleby & Mawdet.* One said, Thou art a Pillory Knave: Remember, thou shouldst have been set on the Pillory; Held actionable; *Cro. Eliz. 11. 1 And. 12. Moor 79. Pl. 210.* He is a false Knave, and worthy to stand on the Pillory.

Where A. said of B. He stole Corn out of my Barn; held actionable, though perhaps the Corn might not be worth a Farthing: For this is Felony, though not Capital. *Hob. Rep. 249. int. Male & Ket. Hob. Fo. 184. Moor 883. Pl. 1240. Popb. 129. Hetl. 172. Vide 1 Rol. Abr. 52. R. Pl. 7. Vide Cro. Jac. 39.* Stealing of Corn must be taken in the worst Sense. *Hob. Fo. 331.* See a Diversity between hast taken and hast stole, *Cro. Jac. 688.*

So if one says of another, That he has stole a certain Thing, that is but *Petit Larceny*, 'tis actionable; for this is a Kind of Felony, and a great Slander; and he ought to be whipt for this by the Law. *1 Rol. Rep. 43. Winch. 6. All. 11.*

One said, Thou art a malicious and seditious Man, and movest the Queen's Subjects to Sedition; Held the Words were too general; and that such Sedition as is made Felony by the Statute of 23 Eliz. must be Sedition against the

the Queen. *Trin. 32 Eliz. int. Peak & Pollart.*

*4 Leon. 121. Cro. Eliz. 214.*

Words spoken by Way of Relation may be Words spo-  
actionable. *Raym. 51.* So if one says, I heard ken by Way  
a Bird sing, or I dreamt, *J. S. stole a Horse.* of Relation,  
*1 Lev. 277. 1 Ven. 60. 1 Syd. 434.* &c.

I know my self, and I know you: I never Buggery, &c.  
bugger'd a Mare: Actionable. *1 Ven. 276.*

*2 Lev. 150.*

One said of a Man, That he was a Steal- A Steal-  
Sheep, and a Steal-Calf; and held actionable, Sheep, and  
though the Words were spoken Adjectively; Steal-Calf,  
for in Sense it is as much as to say, a Stealer of spoken Ad-  
Sheep, and a Stealer of Calves. *Mich 5 Jac.*  
*int. Aston & Goffe. 1 Rol. Abr. I. Pl. 5.*

So if he had said Sheep Stealer; *3 Bul. 303.* A Horse-  
So, Thou art a Horse-Stealer; said to be action- Stealer.  
able. So, Thou art a Sheep-Thief; action-  
able, *2 Bul. 145.* I think he is a Horse-  
Stealer, &c. *Cro. Eliz. 348.*

Thou art a Coney-catching cheating Thief; Coney-catch-  
held actionable; *Hill. 9 Car. int. Redhead &* ing cheating  
*Smith.* But where one said, Thou art a Rogue,  
a Coney-catching Rogue, a cozening Rogue,  
a cut-purse Rogue, held not actionable, because  
all but Rogue are Adjectives. *Cro. Jac. 536.*  
*Palm. 10. 2 Rol. Rep. 91.*

And it's said, where Adjective Words pre- Adjective  
sume or import an Act done, or scandalize a Words acti-  
Man in his Office, Profession or Trade, an onable.  
Action will lie for them; but not for an In-  
tent or Inclination only. *4 Co. 19. a. Ibid. b.*

To call one Perjured Knave, imports an Act Adjective  
done, but not for Thievish Knave; but, Thou Words im-  
art a Thieving Knave, imports an Act done. porting an  
*4 Co. 19. Stiles 6. Cro. Jac. 66. 1 Syd. 373.* Act done.

But

But, Thou art a Thievish Pirate, was held actionable. *Latch.* 47.

Thou art a Conjuring Knave, not actionable. 2 *Bul.* 138. But, Thou art a Traitorly Knave, held actionable. 1 *Syd.* 103. 1 *Lev.* 90. Thou art a rebellious and traitorous Knave, held actionable. *Cro. Eliz.* 171.

Thou hast dealt traiterously with J. S. not actionable. *Velv.* 72. But, Thou hast dealt traiterously with the King, actionable.

Thou art a Buggering Rogue, and I could hang thee, held actionable. 1 *Syd.* 373. *Vide Allen* 61. *Vide i Syd.* 220. 1 *Ven.* 276. concerning such-like Words.

Interrogative Words held actionable; as, When wilt thou bring home the Nine stolen Sheep, which thou stoldest from J. S.? *Mich.* 37, 38 *Eliz.* All. 61. So for this, Have you brought home the 40 l. you stole? *Cro. Fac.* 568. 2 *Rol. Rep.* 165: But not if the Words had been, Did not you steal 40 l.? *Vide of these like Words, Palm.* 66. *Cro. Fac.* 422. *March.* 58. *Cro. Eliz.* 26, 273.

When the Scandal affects the Mind, as Felony, Perjury, &c. it's said the Slander remains, and an Action lies.

One said of J. S. Where is that long-lock'd, shag-hair'd, murdering Rogue; held actionable. *Cro. Car.* 318. 1 *Jones* 326. 1 *Rol. Pl.* 11. So for, Thou art a murdering Knave. *Cro. Car.* 318. 1 *Jones* 326. Yet thou art a murderous Quean, was not held actionable. *Hill.* 11 *Fac. Pet's Case.*

One said of another, I am no Traitor: I have seen you in Rebellion: And held actionable, though spoke of a Time past, and though there might have been a General Pardon after; for

Traitorly  
Knave, &c.

Thou hast  
dealt traite-  
rously.

Buggering  
Rogue.

Interrogative  
Words, ac-  
tionable.

Where the  
Slander re-  
mains.

Murdering  
Rogue.

Words spoke  
of a Time  
past.

for the Court will not intend it: But if so, the Defendant ought to shew it. *i Lev. 251.*

One spoke these conditional Words, If *J. S.* Conditional might have his Will, he would kill the King; Words. and held actionable, though he referred it to the Will of *J. S.* for 'tis a great Offence to have such a Will. *i Rol. Rep. 427.* *i Rol. Abr. 48. M. Pl. 1.* & *49. O. Pl. 1.*

For disjunctive Words, they are seldom Disjunctive actionable. *Vide i Rol. Abr. 48. N. I. & Gen. Words. Abr. 102. in Margine.*

Also Words which tend to the Future Tense Tending in have been held actionable; as to say, That he *Futuro.* will rob *J. S.* within two Days. *i Rol. Rep. 427. & 3 Bul. 261.*

He is infected of such a Murder lately com- He is infe- mitted; held actionable. *Dyer 317. Dal. 96, eted of Mur- 103. New Dier 317. b. Margine, it seems to be der.* denied.

To say of another generally, Thou art a Calling one Murderer, was held actionable. *Moor 29. Murderer. Owen 33.*

One said of another, Thou art a Murderer, Murderer and and Bloody Fellow, and I am afraid of thee; bloody Fel- held actionable, *Pas. 41 Eliz. int. Slade & low. Allen. Cro. Eliz. 672. Adjudged upon De- murrer.*

To call one Witch, without more Words, is To call one not held actionable. *i Syd. 53. i Rol. Abr. 45. H. Witch. Pl. 15, 18. So for this, She is a Witch, and I will take my Oath of it. Stiles 47. Cro. Fac. 150. Godb. 181. And some of the Judges have thought there was no Punishment of Witch- craft at the Common Law: And if the Party is not charged with any Act, 'tis not within the Statute of i Fac. 12. Stiles 11. Cro. Car. 282, 324, i Jones 325.*

Sorcerer, Inchanter, &c.

Where the Words are coupled with a Fact done, as bewitching Man or Beast, &c.

Fact done.

Stat. 1 Jac. 12. of Conjuration, Inchantment, and Witchcraft.

So for saying, Thou art a Sorcerer and Inchanter, no Action lies; for Sorcery and Inchantment is but Cozenage, as Fortune-Tellers. *Noy. 22.* 1 *Brownl.* 2. *Godb.* 341. 2 *Brown.* 276. *All. 37.* But *Hut. 13.* adjudged for the Plaintiff; and, according to his Report, the Words were, He is a Witch and an Inchanter, and has bewitched the Children of one S. and so being coupled with a Fact done, were actionable. And where one is charged with bewitching Man or Beast, 'tis actionable. *I Syd. 53.* And some have made a *Quære*, if there be not a Diversity, where one is said to have bewitched a Thing that has Sense, and where that which has none.

One said to another, Thou art a Witch, and didst bewitch me. Some held it actionable, as *Mich. 17 Jac. B. int. Hinch & Heale. Brownl. 14.* But by *Hern's Pleader 112. dubitatur*: Yet allowed, That if the Words had been, Thou, &c. and hast bewitched me that I am lame, an Action would have lain. *Vide Cro. Jac. 600. Cro. Car. 141. I Jones 197, 325. Stiles 59.*

*Note,* That by the Statute 1 Jac. 12. If any shall be convicted to have used Invocation or Conjuration of any Evil Spirit, or to have consulted, covenanted with, entertained, employed, fed, or rewarded, any such Spirit, or taken up any dead Persons, or the Skin, Bone, or other Part thereof, to have used in Witchcraft, Sorcery, Charm, or Inchantment, or to have used any of the said Arts to kill, consume, and lame, any Person; they, together with their Accessories before the Fact,

Fact, shall suffer as Felons, without Benefit Felony without Clergy.

And if any shall be convicted to have by Witchcraft, Sorcery, Charm, or Inchantment, undertaken to tell where any Treasure &c. To tell of lost Treasure, or Goods lost or stolen may be found, or are become, or to provoke any to unlawful Love, or to destroy or hurt any Cattle, Goods, or Person, albeit the same be not effected; they shall, for the first Offence, suffer One Year's First Penalty Imprisonment, without Bail; once every Quarter of that Year stand Six Hours upon the Pillory in some open Fair or Market, and there make open Confession of the Offence committed: And for the Second Offence, shall suffer as Felons, without Benefit of Clergy, &c.

is Imprison-  
ment.

Second Of-  
fence is Felo-  
ny without  
Clergy.

A Man told a Woman, That she sacrificed one of her Children to the Devil, to the Intent to bewitch his Mother; and held actionable, for that an Invocation of Spirits is punishable by the Statute of Witches. *Ad-*

One said, She  
sacrificed her  
Child to the  
Devil.

*judged int. Lock & Lock, Paf. 15 Jac. B. R.  
Vide 1 Rol. Abr. 44. Pl. 13, 50. Pl. 1. Popb.  
128.*

One said to another, The Devil appears to thee every Night in the Likeness of a Black Horse, and thou conferrest with him; and whatsoever thou dost ask, he gives it thee; and that is the Reason thou hast so much Money: Held actionable. *Hob. Rep. 159, 172.  
int. Marshal & Steward. Vide 3 Bul. 74. Moor  
868. Pl. 1204. Hob. 129. 1 Brownl. 8.*

That the De-  
vil appeared  
to the Plain-  
tiff every  
Night, &c.

One

Of working  
by Negro-  
mancy and  
the Devil.

She bewitch-  
ed my good  
Man.

I will make  
thee suffer as  
a Witch, how  
to be taken.

Words to be  
taken *in miti-  
ori Sensu*.

She is a  
Witch, and  
is convicted  
at this Assizes.

One said, Thou dost work by Negromancy, and dost work by the Devil: Held actionable; for this implies a Familiarity, or immediate Usage of the Devil as an Instrument; which though not Felony unless Damage to Man or Beast ensues, yet 'tis a great Slander. *Telv. 150. adjudged.* To consult, &c. Felony, though no other Act done. *3 Inst. 45. Vide Cro. Eliz. 312.*

One said of another, She did bewitch my good Man; and she is a Witch, and I will prove it: Held actionable; for if she bewitched any Man, 'tis Felony within the Statute *i Jac.* and therefore the Action lies. *Adjudged, Trin. 1650. int. Adston & Hunter.*

The Procuration of unlawful Love is within the Statute. *1 Rol. Abr. 45. Pl. 26.*

One said to another, Thou art a Witch, and I will make thee suffer for a Witch; and held actionable; for that the Words shall be taken as usually understood among the Neighbours; and to suffer, shall be intended to suffer Death, and not by Citation in the Spiritual Court, (which was said to be the usual Way before the Statute;) nor by Ducking in the Water, as common People try those who are suspected of Witchcraft. *Pas. 6 Will. & Mar. int. Stephens & Corben. 3 Lev. 394, 395. adjudged by Rokeby and Nevil, Treby inclining accordingly contra Powel, who held the Words should be taken *in mitiori Sensu*; and that it was altogether uncertain what Manner of Suffering was intended.*

One said of another, She is a Witch, and is convicted at this Assizes, (*innuendo Lincolnshire, &c.*) and *J. S.* was bound for her Appearance; and held actionable; for it shall be inter-

intended a Conviction for such Witchcraft, for which she might be indicted; for else she could not be convicted thereof at the Assizes, and therefore a great Slander. *Adjudged int. Hill & Johnson, Mich. 9 Car. B. R. & intratur, Hill. 8 Car. 1203. 1 Rol. Abr. Fo. 45, 46. H. Pl. 25.*

Words importing but an Intention only; Words import, for lying in wait to rob or steal, &c. may be actionable. *Vide Lane 98. Cro. Eliz. 618. Intention of Godb. 43. 3 Bul. 167. Cro. Car. 140. Cro. Eliz. 49, 191, 349, 684, 746. Moor 409. Pl. 555. 2 Syd. 76. 1 Fon. 195. Palm. 278. 2 Bul. 201. Lane 98. 1 Ven. 223. 4 Co. 16.*

If no Act be shewn to be done, in order to the Thing which the Words import, then not actionable; as, Thou wouldst have robb'd me, &c. *Cro. Eliz. 250. Thou wouldst have kill'd me. 3 Leon. 231. Telv. 57. Cro. Fac. 56. Dal. 62. Moor 63. Pl. 174.*

For Words relating to poisoning, *vide 1 Rol. Relating to Abr. 43. Pl. 3, 73. Pl. 10, 71. Pl. 3, 77. Pl. 7. Poisoning. Telv. 160. March. 19. Cro. Eliz. 569. Noy. 63. Godb. 43. Moor. 419. 2 Leon. 30. 2 Bul. 201, 206. 1 Bul. 201.*

He did wrap Gunpowder in a Piece of House-burn. Tow, and lay it under my Window, and ing. put Fire to it, minding to burn my House; actionable. *Cro. Eliz. 6. Vide Godb. 43.*

In most Cases where the latter Part of the Explanatory Words importing Felony, &c. are explanatory Words. to the first, and abridge the Force thereof, no Action will lie; as where one said, Thou art a Thief, for thou hast stolen my Trees; (but otherwise, if he said my Wood:) Or thus, Thou art a Thief, for thou tookest my Beasts by Reason of an Execution, and I will hang

hang thee. *Cro. Jac.* 114. *Hob.* 77. *Cro. Eliz.* 250. *Vide Cro. Jac.* 66. *Yelv.* 34. *1 Rol. Abr.* 52. *Pl. 6.* *2 Rol. Rep.* 381. *Cro. Eliz.* 471.

**Cumulative,  
or Words of  
Aggravation.**

But where the last Words are cumulative, by Way of Addition or Aggravation, and take not away the Force of the former, they will be actionable; as, Thou art a Thief, and hast stolen my Dung. *All.* 31. *Stil.* 66, 77. Thou art a Thief, and hast stolen my Corn. *Cro. Jac.* 39. *Hob.* 331. He is a Thief, and has stolen my Turneps and Grafs. *Stil.* 231. *Cro. Jac.* 674. *Vide 1 Rol. Abr.* 51. *R. Pl.* 1, 2, 3, 52. *Pl. 5, 6, 7, 8.* *Gen. Abr.* 109, 110.

**Calling one  
Traitor.**

One said to another, Thou art a Traitor, and 'twas held actionable, *int. Procter & Fitz-William, Mich.* 41 *Eliz.* & *Cro. Eliz.* 906. *Cro. Jac.* 275, 674. *1 Bul.* 148. *con. Dal.* 17. *ad-  
judged per Cur.* But there Brook said, the old Books were otherwise. *Vide 1 Jones* 194. & *Cro. Car.* 195. being spoke of a Peer of the Realm.

**He hath spo-  
ken High  
Treason.**

One said of another, I will hang him, for he hath spoken Words which be High Treason; and held actionable; for Words may amount to Treason; and the last Words are enforc'd by the first. *Mich. 5 Jac. int. Blanchflower & Atwood. Yelv.* 107. And it was there said by Fleming Chief Justice, That it was not safe for the Plaintiff to have alledged the Words in certain that made the Treason, for that they were *Arcana Imperii*. *Vide Godb.* 153. *Cro. Jac.* 276. *Winch.* 124. *1 Bulst.* 148.

*Arcana Imperii.*

**One**

One said of another, He hath spoken Treason, and I will prove it ; held actionable, *int.* *Simile, and Part of the Costs and Da-*  
*Berisford & Pres. Telv. 197.* But by *Cro. Jac.* *mages re-*  
276. the Court was divided, whether this *leased.*  
was a direct Affirmative that he had spoke,  
&c. and Judgment given for the Plaintiff ; it  
being agreed, That he should receive 20*l.*  
Costs and Damages, and release the rest.  
*Vide 1 Bul. 147, 148.*

One said of another, I doubt not to prove *I doubt not*  
he hath spoken Treason ; and held actiona- *to prove, &c.*  
ble. *Winch. 123, 124. Hut. 75. 1 Rol. Abr.*  
50.

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**N****C H A P.**

## C H A P. XV,

*Gen. Abr. 86,  
87. &c.*

*De Imposition' Crimen Perjurii, &c.  
& Contrafctionis Scriptor', &c.*

Charging one  
to be for-  
sworn.

Was perjured  
in the Court  
of T.

*Alier, not  
shewing  
what Court it  
is.*

Would prove  
him forsworn  
in the Eccle-  
siastical  
Court.

*Simile, in the  
Consistory  
Court.*

If one says of another, He hath forsworn himself, no Action lies. *Paf. 40 Eliz. B. R. Cro. Eliz. 429. 4 Co. 15.*

If one says to another, Thou waft perjur'd in the Court of T. an Action lies; for this shall be intended a sufficient Court to hold Plea. *Paf. 40 Eliz. B. R.*

Yet it was held otherwise, where one said of another, Thou hast forsworn thy self in L. Court, because he did not shew what Manner of Court it was; for it cannot be intended or known, whether this is such a Court as may compel one to swear or not. *Mich. 8 Jac. B. int. Law & Bennet.* But there are several Books to the contrary; as, *Cro. Fac. 190. Cro. Eliz. 720. Hern's Pledger 111.*

One said, Thou art a forsworn Knave; and I will prove thee forsworn in the Ecclesiastical Court: Held actionable; for the Ecclesiastical Court is a Court known. *Paf. 40 Eliz. B. R. int. Shaw & Thompson. 1 Rol. Abr. Fo. 40. Pl. 9.*

So for this; P. hath taken a false Oath in the Consistory Court of E. actionable. *1 Leon. 131. int. Pierce & How. Vide Cro. Eliz. 185.*

He was falsely forsworn in the Court of the *Simile*, in the Bishop of E. at E. held actionable, because Bishop of E's 'tis well known every Bishop has his Court.

*Cro. Eliz.* 297, 609. 2 *Rol. Rep.* 410. Yet *Cro. Jac.* 436. a like Case adjudged contrary: The Words were, Thou art perjur'd, for thou art forsworn in the Bishop of G's Court.

But where one said to another, Thou art a Wast for-  
perjur'd Fellow, for thou wast forsworn be- sworn before  
fore the Lord Bishop of N. held not action- the Lord Bi-  
able, because he did not say this was in the shop of N.  
Bishop's Court, and so uncertain whether  
it was Perjury; and it shall not be intended  
to have been in his Court. *Mich. 15 Jac. B.R.*  
*int. Keble & Page. Cro. Jac. 436.*

One said of another, He did forswear me *Simile*, about  
(meaning the Plaintiff) 40*s.* worth of Tithes *Tithes.*  
in *Canterbury* Court: Not actionable; for  
there are several Courts in *Canterbury*; and it  
is not shewn in what Court, nor before what  
Judge, nor that the Judge had Plea of Tithes.  
*Paf. 43 Eliz. B.R. int. Bray & Partridge.*

*Hut. 34.*

One said, He hath forsworn himself before *Simile*, before  
the Council of the Marshes of *Wales*, in the the Council  
Suit I had against him there for Perjury: of *Wales.*  
Held actionable, *int. Adams & Fleming, Hob.*

*Rep. Case 360.* though it was objected the Court could not take Notice of this Council.

*Vide 2 Rol. Rep. 471. Hob. Fo. 283. 1 Brownl. 13.*

*Hut. 34.* But in all these last Books it seems the Words were, He hath forsworn, &c. and I will sue him for Perjury.

One said of another, That he was perjured Was perjur'd in his Answer in the Star-Chamber; and held in the Star-actionable. 40 *Eliz. B.R. int. Corbet & Hill.* Chamber, &c.  
*Cro. Eliz. 609. 1 Rol. Abr. 83. Pl. 9.*

So for this, Thou wast falsely forsworn in the Star-Chamber, and it shall be intended in a Suit there. *i Leon. 127. Cro. Eliz. 135.*

Forsworn in  
the Court of  
Requests.

One Man said of another, Thou wast forsworn in the Court of Requests ; and held actionable. *Hill. 41 Eliz. int. Brook & Dougby. Hut. 34. i Leon. 127. Cro. Eliz. 135. i Rol. Abr. 69. Pl. 42.*

In a Court-  
Baron.

But 'tis otherwise where the Words import, That he was forsworn in a Court Baron, because 'tis not a Court of Record. *Paf. 8 Jac. int. Perry & Rock, in Scaccario : But Winch. 3. con. & Hut. 34. con. Vide postea.*

*Aliter, with an  
Innuendo.*

But for this, Thou art falsely forsworn in Bell Court, *innuendo* a Court-Baron ; that with this *Innuendo*, the Action lies, else not. *Cro. Eliz. 297. Hern's Pleader 111, 137.*

*Aliter in  
Court-Baron.*

Thou art a forsworn Jack in the Court-Baron of *D.* Thou hast sworn me out of 20 s. Rent, and haft me on thy Side : Held actionable. *Cro. Eliz. 342, 348.*

*Aliter in  
Court-Leet.*

If one says of another, Thou wast forsworn in the Leet at *D.* Held actionable. *Mich. 38, 39 Eliz. int. Wild & Cokeman. Cro. Eliz. 492, 709. Winch. 3. Noy 34.*

In his Depo-  
sition at *T.*

One said, He is a forsworn Man, and hath taken a false Oath in his Deposition at *T.* where he waged his Law against me ; and adjudged *pro Quer.* *Cro. Jac. 204.*

In the Hun-  
dred Court.

Upon a Discourse between *A.* and *B.* of a Suit in a Hundred Court, in which *A.* was produced as a Witness, and sworn : *B.* said to *A.* Thou art a perjured Rogue ; and held actionable ; for Perjury in an Hundred Court is within the exprefs Words of the Statute, *5 Eliz. P. 1653. int. Saintsbury & Alborne. i Rol. Rep. 42. Pl. 30.*

But

But for these Words, Thou art a false and forsworn Knave, and that I will prove; for thou wast forsworn in the Hundred Court, *Innuendo S. Court*: Held not actionable, it not being shewn in the Declaration that any Suit was depending, &c. *Velv. 27. int. Gore & Morton. Cro. Eliz. 905.*

*Note, To say of a Man, That he is or was forsworn, (unless it relates to some Oath he hath taken in some Court of Record, Court-Baron, or Court-Leet, in the Assizes or Quarter-Sessions,) the Action will scarce lie. 1 Cro. 307, 439, 572. Owen 13, 62. Hut. 44. Stiles Rep. 452.*

The Forfeiture for Perjury is 20*l.* Six Penalty for Months Imprisonment, his Testimony to be Perjury of no Value, and (for Disability to pay the Fine) to be put in the Pillory, and the Criminal's Ears to be nailed. *5 Eliz. Cap. 5. &c.*

One said to another, Thou wast forsworn in thine Answer in Chancery: Said not actionable. *Hill. 41. Eliz. B. R.* But since contradicted by several Authorities.

For where one said, Thou art thrice perjured in thy Answer in Chancery to my Bill; held actionable. *Cro. Eliz. 907.*

One said to another, Thou wert forsworn in the Chancery; and held actionable, for this is a Court of Record. Agreed *per Cur. Paf. 8 Jac. int. Perie & Rock.*

*Hill. 8 Car. B. R. int. Shenke & Batten, ad. Simile, and judged, That an Action lies for these Words, actionable. Thou wert forsworn upon Record in Chancery, innuendo a Suit by Bill there, which the Plaintiff*

tiff recited in his Declaration, it being moved in Arrest of Judgment, that it was not a Court of Record.

So in Common-Pleas, &c.

At the Common-Pleas Bar,

Aliter upon an Innuendo.

Witnesses forswore themselves in Chancery.

Simile.

So if in the Common Pleas. *Hut.* 34, 44.  
Yet held no Action lies for these Words; He had proved the Plaintiff forsworn in the King's-Bench. *Cro. Eliz.* 135. cited.

But for this, He is forsworn and perjured, in Swearing at the Common-Pleas Bar, upon the Deeds which he then had in his Hands; actionable. *Owen* 13.

But for saying, Thou wast forsworn at the Bar, *innuendo* the Bar of Common-Pleas; not actionable. *Hut.* 44. said.

One said of *J. S.* and another, They are proper Witnesses; They will swear any thing; They have forsworn themselves in Chancery, and the Lord Keeper committed them for it; held actionable, for *J. S.* though he does not say that he was forsworn in the Court of Chancery, and though it may be that this was in an Office belonging to the Court; but this shall not be intended. *Adjudged int. Jones & Ball, Mich. 8 Car. B. R. Vide Godb.* 444.

One said of *J. S.* He gave 10*l.* to *B.* for forswearing himself in Chancery; and held actionable; for it shall be intended a Subornation. *Mich. 9 Car. B. R. 1 Rol. Abr.* 51. *Pl.* 5. viz. Thou hast given *J. S.* 9*l.* for forswearing himself in Chancery, and hast hired him to forge a Bond; actionable, though he shews not that he was ever sworn, or that any Bond was forged. *Cro. Car.* 337.

See 1, 4 *Roll. Abr.* fo. 42. upon Discourse *Simile*, upon of the Defendant's Answer to a Bill in *Chancery*. *an Answer in Chancery.*  
held actionable, though he did not say he was forsworn in any material Point. *Int.*  
*Strode & Allen, Mich. 9 Car. B. R. Cro. Car.*

321. 1 *Roll. Abr.* 78. *Pl. 3.*

But where one said, He hath delivered Un-truths upon his Oath, in his Answer to the Bill of *J. S.* in *Chancery*; not actionable, because it might be in some Matter of Form only, and not in Matter of Substance. *Cro. Eliz. 500. int. Brown & Mitchell. Et Noy 36.*

But *vide 2 Roll. Rep. 145.* and there the *Aliter*, in a Words are, He hath delivered Untruths in a material material Thing in his Answer in *Chancery*; Thing. for which it's said the Action lies: So in *Palm.*

65.

One said of *J. S.* having Discourse of his Answer in *Chancery*, If he will justify his Answer in *Chancery* to be true, I will prove him perjured: Held actionable, without any Averment, That he justified his Answer to be true; for this shall be intended, and the Slander is apparent. *Int. Frier & Corbott, Mich. 3 Car. B. R. Latch. 219. 1 Roll. Abr. 75. Pl. 4.*

One said, He is a forsworn Knave, and took a false Oath against me at a Commission at *W.* not actionable, because it did not appear what Authority the Commissioners had, nor in what he was forsworn. *Winch. 2, 3, adjudged. H ut. 44.*

A Man said of *J. S.* He hath forsworn himself in a Court of Record; held actionable, though he does not express what Court he means. *Mich. 14 Car. B. R. int. Hoskins & Chele, Cro. Car. 509.*

N 4

One

*Simile, and his Oath is upon Record.*

One said of *J. S.* He is forsworn, and his Oath is upon Record : Held actionable ; for it is as much as if he had said, His Oath is upon Record, and he is forsworn ; for the Perjury is not upon Record, but his Oath only ; and so it must be intended that he was forsworn in the Matter, which he swore of Record. *Mich. 22 Car. B. R. int. Osborne & Brooks. Vide 1 Rol. Abr. 65. Pl. 1. All. 7.*

*Simile, at London, &c.*

Thou hast forsworn thy self at *London*, and there it appears upon Record. Adjudged for the Plaintiff upon Demurrer, *Cro. Eliz. 583.*

*Perjured upon Record.*

Thou art a Perjured Knave, and standest perjured upon Record, for denying of thy own Hand, and I will prove it : Held actionable ; for this must be intended a Court of Record. *3 Bul. 283.*

*Hath taken a false Oath before Justice W.*

The Plaintiff declared, That he exhibited Articles in *B. R.* against the Defendant for his good Behaviour, and swore the said Articles to be true before Justice *W.* one of the Justices of the same Court ; and the Defendant, to the Intent to slander the Plaintiff, said of him, That he hath taken a false Oath against him before Justice *W.* (*innuendo* the said Oath taken upon the said Articles : ) Tho' 'tis not aver'd, that the Oath was taken of Record, yet 'twas held actionable ; for this shall be intended, the Articles being exhibited in Court, and sworn before a Justice of the Court. Adjudged, *Mich. 10 Car. B. R. int. Yolden & Wannell. 1 Rol. Abr. 39. Pl. 1. 1 Jones 352. Cro. Car. 378.*

*Is a Perjuror, &c. (Welch Words.)*

One said of another, He is a Perjuror : He swore once for me ; and the second Time hath perjured himself with *J. S.* (a Stranger;) Held actionable. *Mich. 9 Car. in Scaccario ; where*

where the Words were spoken in Welsh, and interpreted to be so in English.

One said of J. S. I will prove J. S. for- I will prove sworn, and that Ten Men can justify; and I J. S. forsworn, could prove him perjured if I would: The last Words are actionable, though not the first; *int. Whitacre & Lovergden, Pas. 5 Fac. B. R.* it being a great Slander to have it reputed to be in the Power of any Man to prove him perjured. Yet the Words following, *viz.* If I list, I can prove him perjured: Not actionable, *per Hut. 127, 128.* because no Affirmative that he was perjured.

One said to another, I did not know Mr. W. I will prove' was your Brother: He hath forsworn himself; him perjur'd, or else, &c. and I will prove him perjured, or else I will bear his Charges: Held actionable; for these Words, though they are spoke conditionally to bear his Charges, if he did not prove him perjured. *Mich. 37, 38 Eliz. B. R. Woodroofe's Case. Moor 365. Pl. 498. Cro. Eliz. 429.*

One said, I will prove H. a perjured *Simile.* Knave: Held not actionable. *3 Leon. 151. int. Farm & Dorrington. Vide Cro. Eliz. 222.*

Nor for this; I have indicted Mr. B. of I have in- Perjury; and I doubt not to prove him per- dicted, &c. jured to all Intent\$ and Purposes; for other- wise there could be no Prosecution, or En-quiry after Evidence without Danger of an Action. *1 Syd. 220. Kehw. 29. b.*

One said of another, That he was perju- Would prove red; and he would prove him so by Two him perjured, Witnesses; and held actionable, though he &c. does not say in what Court he was perjured, or hew. *Int. Rayner & Grimston, Trin. 39 Eliz. B. R. Owen 62. Noy 61.*

But

*Alier, generally.*

But for saying generally, He hath forsworn himself, no Action lies. *Cro. Eliz. 429. 4 Co. 15.*

*Spoke of a Bayliff.*

One said, Thou art a forsworn Bayliff, and wert forsworn this Day: Not actionable. *Cro. Eliz. 788.*

*Spoke of the Master of Carpenters-Hall.*

Thou wert forsworn in *Carpenters-Hall*: Not actionable, though spoke of the Master, and in Relation to his Oath there taken. *Cro. Eliz. 788.*

*By thy false Oath thou hast hang'd, &c.*

But these Words were held actionable, Thou art a forsworn Fellow, for by thy false Oath thou hast hang'd as true a Man as thy self; for it cannot otherwise be intended, than of an Oath judiciously taken. *Adjudged, Cro. Eliz. 572. 1 Rol. Abr. 70. Pl. 46.*

*A main sworn Fellow, &c.*

He is a dissembling Fellow, a main sworn and forsworn Fellow: Not actionable. *1 Brown. 4 & 9.*

*Wast indicted for, &c. Hast compounded, &c.*

One said to another, Thou art a forsworn Knave, and wast indicted by 12 Men, and hast compounded for it: An Action lies; for all being laid together, it appears that he intended a Perjury in the Court of Record. *Mich. 1 Car. int Gilbertin & Rowe, adjudged. Vide 3 Bul. 304.*

*I will teach thee the Price of an Oath, &c.*

One said to another, Thou art a forsworn Man: I will teach thee the Price of an Oath, and will set thee on the Pillory: Held actionable; for this shall be intended such a Forswearing, for which he ought to stand upon the Pillory, and not any voluntary Oath. *Hill. 41 Eliz. B. R. 1 Rol. Abr. 40. Pl. 11, 70. Pl. 46.*

One said of *J. S.* I had not been cast in In Reference  
that Action, but for the Oath of *J. S.* and  
he was forsworn ; and I marvel that *B.* would  
marry his Daughter to such a forsworn Man.

to a Trial in  
a Court-Ba-  
ron.

These Words were spoken at *S.* upon the  
Trial of an Issue at the Court-Baron of *Geton-*  
*Soke*; but not held actionable, because not  
alleged that *S.* was within the Soke of *Geton*, Want of Al-  
&c. Mich. 11 Jac. B. R. int. Crawford & legation.

Brise. 1 Rol. Abr. 40. Pl. 13.

One said of another, He is a forsworn Knave, for he swore that the Wood was worth 40 s. where it was dear of 13 s. 4 d. Not actionable, because he did not directly say it was worth 40 s. but that it was dear of 13 s. 4 d. &c. Hill. 13 Jac. B. R. 1 Rol. Rep. 287. 3 Bul. 150.

He swore the  
Wood was  
worth, &c.

One said to another, Thou wert forsworn in that Action at the Assizes, *innuendo*, &c. forsworn at and I will prove it: Actionable, upon a Dis- course concerning an Issue, the Matter being alledged in the Declaration, though he did not alledge the particular Thing in which he was forsworn ; for it was alledged, that he said the Words, having a Discourse of this Issue, and of the Evidence so given. Paf. 11 Jac. B. R. int. Lane & Gibbons.

Thou wert  
the Assizes.

One said to another, Thou art forsworn, *simile*, of a and didst take a false Oath at the Assizes at *H.* false Oath against *J. S.* Not actionable, without an Averment that this was at a Trial, or before the Court or Jury ; for it might be at the Assizes in a private House, or other Place. Paf. 15 Car. B. R. int. Pritchard & Smith. 1 Ven. 195.

Thou

Before a  
Judge of Af-  
fize.

Before the  
Justices of  
Affize.

Before the  
C. Justice.

*Simile, & du-  
bitatur.*

Took a false  
Oath at the  
Sessions.

Giving Evi-  
dence at a  
Trial.

Suborner of  
Perjury.

Thou art a false forsworn Knave: Thou didst take a false Oath before a Judge of Affize to hang a Man. Adjudged for the Plaintiff, *1 Brownl.* 3.

He is falsely forsworn before the Justices of Affize between *A.* and *B.* actionable. *Hetl.* 119. *adjudged.*

Thou wast forsworn before my Lord Chief Justice, in an Evidence: Held actionable. *1 Leon.* 127.

But where one said, Your Father and your Brother is a forging extorting Knave, and did suborn *A.* to forswear himself before my Lord Chief Justice: Doubted whether this shall be intended of an Oath taken judicially, *2 Rot. Rep.* 410.

The Plaintiff declared, That he was sworn, and did give Evidence at the Sessions, upon an Indictment against the Defendant; and that after the Defendant, having Discourse of the said Oath, did say, The Plaintiff did take a false Oath against me at the Sessions, *innuendo* the said Oath, &c. The Action does well lie, for the *Colloquium* shews to what the Words did relate. *Int. Wood & Coat, Pas.* 24 *Car.* 2. *1 Ven.* 195.

So if the Plaintiff declares, He did give Evidence at a Trial between the Defendant and *J. S.* and that afterwards, having a Discourse of the said Trial, the Defendant said, Thou art forsworn, &c. *Hard.* 152.

One said of another, He is a Suborner of Perjury: Actionable, though it's not alledged that he suborn'd any Person in certain. *Mich.* 25, 26 *Eliz.* *int. Guerdon & Winterflood.* *Cro. Eliz.* 308.

So for this, Thou art a lewd Fellow, for Drawn a Man thou hast drawn such an one to Perjury : to Perjury.

Actionable, because 'tis as much as if he had said, he had suborned him. *Cro. Eliz.* 899, 906.

So for this, You have caused this Boy to Caused him, perjure himself: Adjudged for the Plaintiff. &c.

*I Brownl.* 2.

But not for this, You have procured a per- Procured jured Man to seek my Blood. *Cro. Eliz.* 342. him, &c.

One said to a Jury-man, Thou art a com- Art a com- mon Jury-man, and hast seen the Overthrow mon Jury- of 100 Men by thy false and subtil Means : An Action lies ; for these Words, Subtil and false and Means, shall be intended of a com- mon Juror ; and this touches him in the Point of his Oath. *Pas. 7 Jac. B. R. Peter's Case.* *Moor* 876. *Pl. 1226. Godb.* 242. *Hetl.* 173.

*A.* being charged at the Sessions of the Constable Peace, for several Trespasses done to *J. S.* and *J. N.* a Constable was produced, to te- stify his Knowledge in the Matter ; and he was sworn, and upon this gave his Testimony : And thereupon *A.* said, having Reference to the said Oath, That he is forsworn. Though this Evidence was not given upon any Issue, so that it may be Perjury within the Statute ; yet if he was forsworn in such a Court of Record, this was an Offence at the Common Being an Of- Law, and therefore actionable. *Mich. 8 Car.* fence at Com- *B. R. int. Duke & Corderoy, adjudged and affir-* mon Law. *med in Error. Cro. Car.* 288. *I Jones* 307.

If one says to another, That he was for- Was forsworn sworn in a Court of Record, (in such Matter in a Court of and Manner as is not within the Statute of Record, &c. *5 Eliz.* of Perjury;) yet because he may be actionable, be- indicted for this at Common Law, an Action ble at Com- cause indicta- upon mon Law.

upon the Case lies, though it was urged that it was not Perjury within the Statute of 5 E. liz. the Oath being made upon a Writ of Enquiry of Damages, of which the Court gave no Opinion, but that the Action lay, admitting that it is not within the Statute, *Mich. 13 Car. B. R. int. Pruer & Meadman. Vide 1 Leon. 131, 132. Cro. Eliz. 185. 1 Rol. Abr. 42. Pl. 27, 39. Pl. 3.*

*Stat. 5 Eliz. 9.*

Penalty of  
such as shall  
suborn Wit-  
nesses.

*Simile, for  
such as com-  
mit wilful  
Perjury.*

Forfeitures  
divided.

*Note: By the Statute 5 Eliz. Chap. 9. it is enacted, That none shall suborn a Witness to give Testimony in any Court of Record, concerning any Lands, Goods, Debts, or Damages, in Pain of 40 l. And if the Offender, (being convicted thereof) hath not wherewithal to satisfy the said Forfeiture, he shall suffer Six Months Imprisonment without Bail, stand upon the Pillory one whole Hour in the same or next Market, and be for ever disabled to give Testimony in any Court of Record, until the Judgment given against him be revers'd by Attaint or otherwise.*

*Also, he that commits wilful Perjury, shall forfeit 20 l. suffer 6 Months Imprisonment without Bail, and be ever after disabled to give Evidence, until the Judgment given against him be revers'd, as aforesaid. And here also, if he hath not wherewithal to discharge the Fine (in the Country), the Sheriff, or (in a Corporation) the head Officer, shall cause him to be set upon the Pillory in some Market-Place, and to have both his Ears nail'd.*

*The Forfeitures to be divided betwixt the Queen and the Party grieved.*

Judges

Judges of the Courts where such Offences shall happen to be committed, Justices of Assize, Gaol-Delivery, and of Peace, have Power to hear and determine the same Offences. This Act to be proclaimed at every Assize, and not to extend to any Court Ecclesiastical; but they may proceed as in Times past.

To what this  
Act shall not  
extend.

Neither was it to restrain the Power of the Star-Chamber, nor of the Council of Wales, or in the North, to punish heinous Perjuries; but that they may proceed as formerly, so as for the said Offences they inflict no less Punishment than by this Statute ordained.

Where one said of another, He hath written a Forged Will, wherein I will prove him false, forsworn, and perjured, in a Will that he made of *J. H.* An Action lies for these Words; for it shall be presumed, that he intended he was perjured in his Oath taken touching the said Will. *Hill. 12. B. R. int. Cowley & Clough, adjudged in Arrest of Judgment.* *1 Roll. Abr. 39. Pl. 2.*

Charging one  
with forging  
a Will, &c.

One said of *B.* and *C.* We will have them Subornation stand upon the Pillory, and have their Ears of Perjury: for Perjury, and Subornation of Perjury: Held actionable, as a direct Affirmative.

*1 Rol. Abr. 50. P. Pl. II.*

## C H A P. XVI.

Stat. 5 Eliz.  
14.

*Of Imposing the Crime of Forgery to  
any Person.*

Penalty upon  
such as shall  
willingly  
forge, or  
cause Deeds  
to be forged,  
*&c.*

The Offender  
to pay the  
Party double  
Costs and Da-  
mages.

Pillory.

Ears cut, *&c.*

Perpetual Im-  
prisonment.

**N**ote, That by the Statute 5 Eliz. 14. it is enacted, That if any Person alone, or with others, shall willingly, subtilly and falsly, forge or make, or cause to be forged or made, any false Deed, Charter or Writing sealed, Court-Roll, or Will in Writing, to the Intent that the Freehold or Inheritance of Lands, or the Right or Title thereof, may be troubled, defeated or charged; or shall publish or shew forth in Evidence, any such forged Writing as true, knowing the same to be false and forged, and shall be thereof convicted, upon an Action of Forger of false Deeds (to be founded upon this Statute) at the Suit of the Party grieved, or otherwise; shall pay to the Party grieved, double Costs and Damages, to be affessed in the Court, where such Conviction shall be; shall be set upon the Pillory in some Market Town, or other open Place, and there have both his Ears cut off, and also his Nostrils slit, and sear'd with a hot Iron: He shall also forfeit to the Queen, her Heirs and Successors, the Issues of his Lands, and suffer perpetual Imprisonment during his Life; and the said Costs and Damages shall be first levied upon the Goods and Issues of the Lands of the Offender, notwithstanding the Queen's Title thereunto.

For

For forging, &c. of a Lease for Years of Lands (not Copyhold), or an Annuity, Obligation, Bill, Acquittance, Release, or other Discharge of any Personal Thing; the Offender shall pay double Costs to the Party grieved, to be assessed as before; to be set upon the Pillory, lose one of his Ears, and suffer a Years Imprisonment, without Bail.

The Party grieved may have his Remedy for his double Costs and Damages, by Original Writ out of the Chancery; as in case of Trespass, by Bill in the King's-Bench, or in the Exchequer, in which Suit no Essoin, &c. shall be allowed.

Howbeit, he that is once punished for this Offence, shall not after be impeached for the same: And although the Plaintiff's Release, or Discontinuance of Suit, may discharge his own Remedy; yet the rest of the Punishment shall be nevertheless inflicted, by Judgment and Command of the Court.

The second Offence, is Felony without Penalty for Clergy; whereof the Offender being convicted or attainted, he shall forfeit his Lands and Goods, as in other Cases of Felony, saving to all other Persons their Right, &c. neither shall such Conviction or Attainder extend to Loss of Dower, or Disherison of Heir.

Provided this Act shall not extend to charge Whereto this any Ordinary, Commissary or Official, for putting their Seal of Office to any Will, not knowing the same to be forged; nor for writing such a Will, or the Probate thereof. Justices of Oyer and Terminer, and Assize, in their Sessions, shall hear and determine these Offences.

Nor to any  
Proctor, Ad-  
vocate, &c.

Provided this Act shall not extend to any Proctor, Advocate or Register, for writing, setting forth, or pleading any Proxy, for the Appearance of any Person cited to appear in the Ecclesiastical Court; nor to any Arch-deacon or Official, for putting their Seal to such Proxy; nor to any Ecclesiastical Judge, for admitting the same; nor to any Attorney or Counsellor, for pleading or giving in Evidence any such forged Writing, being no Party, nor privy thereunto; nor to any Person that shall plead, or shew forth any Writing exemplified under the Great Seal, or the Seal of any other Court of this Realm; nor to any Judge, Justice, or other Person, that shall set any such Seal thereunto, not knowing the same to be forged.

Thou hast  
made forged  
Writings, &c.

One said of another, Thou hast made forged Writings, and thou shouldst have lost thy Ears for it; not actionable, because 'tis altogether uncertain what Writings he intends by the first Words; for perhaps he may intend some Writings, the Forgery of which will not deserve the Loss of his Ears; and then the last Words do not explain his Intention, in as much as this is but a bad Conclusion upon the Premises. *Mich. 14 Jac. B. R. int' Aier & Frost. 3 Bul. 265. 1 Rol. Rep. 431. 1 Rol. Aier. 66. Pl. 8. Vide Winch. 97.*

**Uncertain  
Words.**

Thou hast  
made false  
Writings, &c.

Thou hast made false Writings; not actionable, tho' spoke of an Attorney, for 'tis not his Business to make Writings, and therefore no Scandal to him in his Profession. *Winch. 39, 40. sed Quære.*

Hast forged,  
&c.

Thou hast forged Writings; not actionable.  
*3 Leon. 231. 1 Leon. 101.*

Thou

Thou hast made false Writings, thereby to False Wri-  
get my Land from me ; not actionable, tho' tings, &c.  
objected the last Words import, they were  
sealed. *Cro. Eliz. 853.*

Thou art a Forger; not actionable. *3 Leon.* Thou art a  
231. But *Cro. Eliz. 296.* per *Cur. contra*, and Forget; not  
that it must be intended of such Things, of actionable.  
which Forgery may be done.

Thou art a Forger, and art sued in the Star- *Simile*, and  
Chamber for forging, by one *J. S.* held actionable.  
actionable, and that the last Words enforce  
the first. *Cro. Eliz. 296.* adjudged.

One said of *B.* I have found out *B.* now ; I have found  
out Records which he hath forged,  
and he shall dearly pay for it. I have catch'd  
the Forgerer ; held actionable, tho' it does  
not appear whether he intends Records of a  
Copyhold Mannor, (or other Thing which is  
not a true Record, but only a Record in Ap-  
pellation) or what other Record, for it shall  
be intended to be a true Record of a Court  
of Record ; and if it be a true Record, the  
Forgery of which is not within the Statute of  
*5 Eliz.* or *1 Hen. 5.* yet is it a great Slander. A great Sla-  
der. *Adjudged, Mich. 13 Car. B. R. int' Garbut & der.*  
*Bell. 1 Rol. Abr. 65. Pl. 1. 76. Pl. 3.*

You have made a false Record, and that I You have  
will make you answer where you dare not made a false  
shew your Head, and you have sought my Record, &c.  
Death ; said to be actionable, *int' Christian and*  
*Adams, 1 And. 121.* as cited : But *4 Leon. 54.*  
said to be adjudged *pro quer'*, but no Notice  
taken of the first Words.

Thou art a Knave upon Record, a forging Forging  
Knave ; being spoke of an Attorney, *Latch. Knave, &c.*  
21. but no Judgment, because the Parties a-  
greed. Thou art a forging Knave ; not action-  
able :

able. *Gouſt.* 125. Otherwise, if spoke of an Attorney. *i Brownl.* 16.

A Certificate,  
&c.

He hath forged and counterfeited a Certificate to a Commission out of the Exchequer, and hath forged and counterfeited Mr. B's Hand, the Commissioner, and hath put his Hand to it; by reason whereof he got a Verdict in the Exchequer, whereas otherways he must needs have had the Foyl: Held actionable, though not shewn what Commission it was, nor in what Suit. *Cro. Eliz.* 72. adjudged.

Commissioner's Hand,  
&c.

Forged a  
Writ.

He hath forged the late Queen's Writ; held actionable, and affirmed upon Error. *Tely.* 146.

*Simile,* spoke  
of an Under-  
Sheriff.

One said, There can be no Writ against me; we have sought for the Writ, but can find none; but if there be any, it is forged by the Under-Sheriff, Mr. E. H. as he hath forged Two Writs. *E. H.* may have an Action upon the Case for these Words, without any Averment, that he was Under-Sheriff at the Time, because he is charged with the Forgery of a Writ; and tho' not within the Statutes, yet 'tis a great Slander and Defamation. *Adjudged, Pas.* 16 *Jac.* *Vide i Rol. Abr.* 65. *Pl. 2.*

*Simile of a  
Writ of Qua-  
re Impedit.*

Thou hast used Juggling with me, but thy Juggling shall not serve thy Turn; and hast forged a Writ of *Quare Impedit*: The first Words not actionable, but the last are, and therefore adjudged for the Plaintiff. *Cro. Eliz.* 178.

Thou didſt  
forge an Ac-  
quittance,  
&c.

One said to *J. S.* thou didſt forge an Acquittance, and I will prove it; held actionable. And it is not material for what the Acquittance was made, for such Forgery is within the Statute. *Adjudged, Mich.* 13 *Car. B. R.*

*inter*

inter Onge & Spark. 1 Rol. Abr. 66. Pl. 9. Vide 1 Syd. 451. a like Point per Twisden, but denied by the rest of the Judges ; unless said, an Acquittance of some Person in certain.

Thou hast forged a Deed to cheat J. S. of *Simile*, of a his Land ; held actionable. 1 Syd. 16. Thou Deed to  
haſt forged faſle Letters, and haſt given me a cheat, &c.  
faſle and forged Acquittance ; not actionable.

1 Syd. 155.

You have falſly forged your Father's Hand, *Simile*, of his and thereby falſly have procur'd your Father's Father's Tenants to pay their Rent to you, due to your Hand, &c. Sister ; held not actionable, because not shewn what he forged, and perhaps he only counterfeited his Father's Hand to a Letter. Cro. Eliz. 166. Telv. 146. 3 Bul. 265.

One said to another, Thou haſt forged an Obligation, and I will prove it. Though he does not shew between what Persons this was, nor that the Obligation was ſealed and delivered, yet an Action lies ; for it cannot be intended but that it was ſealed and delivered, otherways it could not be an Obligation , but a Writing only. Adjudged, Pas. 40. Eliz. B. R. int' Wade & Buffard. Cro. Eliz. 607.

Thou haſt made a falſe Bond ; not actionable, Cro. Eliz. 607. per Cur'. Thou haſt made a forged Bond, and I will prove it ; held actionable, Cro. Eliz. 554.

One said to another, He hath forged the Queen's Evidence, and I would not be in his Coat for 1000 l. yet not actionable for the generality of them. Int' Wright & Gayner. Mich. 40, 41 Eliz. B. R. dubitatur. Vide 1 Rol. Abr. 65. Pl. 4. Cro. Eliz. 99.

Forged a  
Deed, and a  
dead Man's  
Hand to it,  
&c.

One said to *J. S.* Thou hast caused a Deed to be forged, and a dead Man's Hand to be put to it, and cheated and cozen'd my Husband of his Land: Held actionable, tho' they express not what manner of Deed it was, whether the Forgery was within the Statute or Common Law; for Forgery is an Offence at the Common Law, though not within the Statute, for which the Party may be indicted. *Adjudged int' Pudsy & Pudsy. Mich. 15 Car. B. R. 1 Rot. Abr. 66. Pl. 10.*

Upon com-  
pounding by  
Licence, &c.  
*in Scaccario.*

Spoken inde-  
finitely, &c.

*A.* exhibited an Information in the Exchequer against Two Men for the cutting of Wood; and after, one of the Barons gives to him Licence by Writing to compound with them; upon which, *C.* says of *B.* The Licenses which I had in the Exchequer were counterfeited, and *B.* did forge them; and held actionable, tho' he spoke of the Licences indefinitely; and tho' no Licence can be given by the 18 Eliz. before the Answer of the Defendant, which is not alledged: For to say, that he forged such Licences before Answer, is a great Slander. *Adjudged int' Gregory & Wilks. Mich. 11 Jac. B. R. Vide 1 Rot. Abr. 65. Pl. 5. 2 Bul. 137.*

Upon a Deed  
shew'd in  
Chancery.

That Deed is  
forged, &c.

Also in a Suit between *A.* and *B.* in the Chancery, *A.* shew'd a Deed indented, by which he claim'd certain Lands; and after *B.* said to *A.* That Deed is a forged Deed, and you made it under a Hedge; 'tis actionable, tho' *A.* might make the Indenture, and another write and seal it, and so forge it; for if he made the Deed that was forg'd, he forg'd it. *Adjudged int' Reynel & Sackfield. Mich. 11 Jac. B. R. 1 Rot. Abr. 65. Pl. 6. 2 Bul. 132.*

One

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One Man said of another, Mr. C. hath put Of a Steward a Presentment into the Juries Verdict, against of a Court, concerning a me, of 3 s. 4 d. for suing P. W. out of the Court, Presentment contrary to a Pain, without the Consent of in the Juries the Jury; not actionable, the said C. being no Verdict Officer of the Court, tho' this is a Disceit in him so to do; for every Disceit will not main- Disceit. tain an Action. *Adjudged int' Carr & Read,* Mich. 4 *Jac. B. R. 1 Rol. Abr. 65, 66. Pl. 7.* *Sed 56. Pl. 28.* said, This was spoke of a Steward of a Court, and to scandalize him in his Profession; so actionable.

A. said, This is B. his Writing, and he B. hath forg'd hath forged this Warrant; *innuendo, &c.* B. this Warrant, shall have no Action for these Words, because the Word, Warrant, is of an uncertain Sense, and the *innuendo* shall not aid it; *int' Thomas & Axworth. Hob. 3. 1 Rol. Abr. 66. Pl. 11.* *1 Brownl. 4. 1 Syd. 16.*

A. being arrested by Virtue of a Warrant *Simile, by Mr. upon a Latitat, said, This is a Counterfeit S. an Attor- Warrant made by Mr. S. who was an Attor- ney.* combe. *Cro. Jac. 648. 2 Rol. Rep. 266.*

Thou hast forged a Writing in such a ones *Simile of a Suit; held actionable. 1 Syd. 16.* And where Writing in Circumstances shew an apparent Intention of Suit. doubtful Words in themselves, that they are Rule of slanderous, the Action lies for them. *1 Rol. doubtful Abr. 40. Pl. 8, 11, 41. Pl. 20, 39, 66. Pl. 12, Words.*

## C H A P. XVII.

*Words spoken by Hear-say, or from the Report of others, &c.*

Against the Author of false News.  
Averment.

**A**S if *A.* says, that *P.* said, That *L.* did a certain scandalous Thing, &c. *L.* may have an Action for this against *A.* with an Averment, that *P.* never said so; for then he himself is the Author of the false News, and shall be charged for it, for this is according to the Law of News. *i Rol. Rep.* 444. *i Rol. Abridg.* 64, *Pl.* 1. *3 Bul.* 225. *Cro. Jac.* 162, 407.

Of Witchery, with Averment.

So if *A.* say to *J. N.* that *J. S.* said to *A.* That *J. N.* did such a scandalous Thing as Witchery; *J. N.* may have an Action against *A.* with an Averment, that he never spoke the Words, nor that *J. S.* ever spoke the Words of him. *Vide i Lev.* 82, 297. *i Rol. Abr.* 64. *Pl.* 2.

Of Poisoning, with Averment.

If a Man says, A Woman told me, that she heard one say, that *Meggs* his Wife has poison'd *Griffin* her first Husband in a Mess of Milk; *Meggs* and his Wife may have an Action for this against him, for else a Man may raise a Scandal of his own Head, without any Punishment, *Cro. Eliz.* 400. there being an Averment that none said so. *Goulf.* 139. *Vide 12 Co. 13,* 134. *Moor.* 187. *i Lev.* 82.

He

He was arraigned at *W. Assizes*, for stealing Of Felony.  
a dozen of Hogs, &c. Here the Arraignment  
implies an Indictment. *Cro. Car. 208.* *1 Jones*  
*299.* *1 Rol. Rep. 49.* *Pl. 2, 64.* *Pl. 5.*

That a Man may receive his Goods taken Of bearing  
from him by a Thief, without any Danger; with Thieves.  
as if a Man makes fresh Pursuit after a Thief,  
and for saying a Man bears with a Thief, no  
Action lies. *Cro. Eliz. 486.* *Noy. 57.* *Gouls.*

119.

She was privy and consenting to the stealing Privy to  
of Goods; held actionable. *Cro. Car. 236.* Goods steal-  
ing.

Where one said, Thou art a Rebel, and Of being a  
all that keep thee Company, and thou art not Rebel.  
the Queen's Friend; held actionable, for he  
explain'd his Intention by the last Words.  
*Cro. Eliz. 638.* *1 Rol. Abr. 69.* *Pl. 38.*

Q. The Difference for charging one to have Of stealing  
stolen Trees, and charging one to have stolen Trees, Wood,  
Wood or Timber, for Timber can't be intend- Timber, &c.  
ed of Trees growing. *Noy. 114.* *per tot' Cur'*  
Wood can't be intended of Trees growing;  
for *arbor dum crescit*, &c. *2 Rol. Rep. 381.*  
*Raym. 33.* *Telv. 152.* *Vide Stiles 25, 27.* *All.*

11. *1 Jones 43.* *Hut. 65.*

Thou art a Thief, for thou hast stolen a Of stealing  
Load of Turfs; actionable, for they are not Turfs.  
called Turfs, till cut from the Earth and dried.

*1 Rol. Abr. 70.* *Pl. 49, 52.* *Pl. 6.*

Thou hast stolen a Load of Hop-poles; Of Hop-  
actionable, for they must be cut, else they poles.  
were not Hop poles. *Cro. Eliz. 225.*

Thou hast stolen my Sheaf of Corn; action. Of a Sheaf of  
able: Thou art a Corn-stealer; actionable, Corn.  
for this must be intended of such Corn as may  
be stolen. *Cro. Eliz. 563.* *Cro. Jas. 457.* But  
where it may be intended the Corn was grow-  
ing,

ing, no Action lies; 1 Rol. Abr. Pl. 50, 51.

*Aliter of Corn.* But *aliter*, if he say, thou hast feloniously stolen my Corn. *Ibid. Pl. 52.* Vide Cro. Fac. 442. Propb. 129. Vide 1 Rol. Rep. 380.

Thou hast stolen my Furz; not actionable, for it may be well intended, that he means Furz growing. *Ibid. Pl. 54.*

*Of stealing a Pye.* He is a Thief, and stole a Pye out of J. B.'s House; not actionable, for perhaps he intends a Bird so call'd. *Idem 71. Pl. 55.*

*Of holding his Hand at the Bar.* Thou art drunk, and I shall never hold up my Hand at the Bar, as thou hast done; not actionable, for it may be, that he held up his Hand at the Bar for Drink, and not for Felony. *Ibid. Pl. 56. 2 Brownl. 272.*

*Of a Physician, Surgeon, &c.* Of a Physician, concerning killing his Patients. *Ibid. Pl. 58. Cro. Eliz. 620. 1 And. 269.*

*Simile of a Chirurgeon.* *Hetl. 69, 70, 71.* *Simile of an Apothecary.* 1 Stil. 245. 1 Rol. Abr. 72. *Pl. 6.*

*Of Murder.* Is not he a Felon, that knew of a Murder and conceal'd it; spoken of *B.* by *A.* to *C.* a Stranger upon Discourse, and held actionable. *Yelv. 154.*

*Of two distinct Matters.* Where the Reason given does not agree with the precedent Words, but make Two distinct Matters; yet they shall be actionable, and the Malice shall be taken to be the greater; as where one said, He is a Traitor, for he robb'd a Man by the High-way side. *Yelv. 154.*

*So where the Intent appears.* So you were burnt in the Hand for Coining; held actionable. *Cro. Fac. 536.* his Intent appearing to charge *B.* with being in Prison for Coining. *Vide 2 Rol. Rep. 104.*

He hath got the Pox, shall be intended of He hath got the French Pox; he hath caught the Pox, shall the Pox.

be intended of the Small Pox. 1 Syd. 324. int'

*Lyn & Hockly.* 1 Lev. 205. of a Woman, or by a Woman, no Difference, when meant of the French Pox.

Thou art a Clipper, and shall be hang'd for Thou art a it; shall be intended a Clipper of Money: Clipper, &c. So, Thou art a Clipper, and thy Neck shall pay for it. 3 Lev. 166, 395.

In many Cases, an Action will lie, where the Words *in mitiori sensu* are not actionable.

And this seems to be a Rule, That where the Rule of Words are dubious, and may receive a double Words, ad- Interpretation, the one Way that shall be action. mitting a able, and the other Way not; they shall be double Inter- taken *mitiori sensu*, so that they shall not be pretation. actionable. Cro. Jac. 438, *inter Gardiner & Spurdance.* 1 Rol. Abr. 71. Z. Pl. 1. Gen. Abr. 140.

But where the Words are not doubtful, nor *aliter*, when in common Acceptance can receive a double they cannot Construction, there they shall be taken accord. admit it. ding to the common Acceptance; and if in common Acceptance they sound in Slander, they shall be actionable, and shall not be strain'd to any foreign Construction to make them actionable. 1 Rol. Abr. 71. Z. Pl. 2. Gen. Abr. 140, 141, &c.

## C H A P. XVIII.

## P R E C E D E N T S.

## Of Actions by Chief Officers, &amp;c.

For a Justice of C. B. and Justice of Peace, where divers Malefactors had broken down Hedges, and the Defendant being examined of abetting therein; he said, That the Plaintiff gave the Tenants Advice to pull down the Hedges. *Hern.* 159. *Rob. Ent.* 79. *Bro. Red.* 19. 2 *Instr. Cler.* 70.

Words of Bribery. *ff.* For a Justice of Peace, concerning Words of Bribery. 3 *Brownl.* 113. *Hern.* 114.

Simile, of Injustice. *ff.* Simile for Words of Injustice. *Hern.* 253.

Cozenage. *ff.* For Words of Cozenage. *Thomp.* 46. 2 *Mod. Intr.* 30.

Scandalum Magnatum. *ff.* Scandalum Magnatum. 4 *Co.* 13. 2 *Instr. Cler.* 21. 2 *Bro.* 61, 63, 74. *Bro. Red.* 21.

Simile. *ff.* For writing and publishing a scandalous Narrative concerning a Peer. 2 *Instr. Cler.* 24.

By a Doctor of Law, &c. *ff.* A Declaration in Case brought by a Doctor of Law, Commissary and Justice of Peace, for Words: Verdict upon Not Guilty, and Judgment for the Plaintiff. 2 *Lut.* 1288.

Member of Parliament. *ff.* Of a Member of Parliament, that he was a Papist. 2 *Ven.* 263.

Mayor and Sheriff, &c. *ff.* For the late Mayor and Sheriff of London, concerning Words of Extortion. *Upp. B. Pres.* 242.

*ff.* For

*ff.* For a Counsellor at Law, against one Libel of a who writ and published a scandalous Libel a. Counsellor, gainst him, directed to his Client. 2 Bro. 22.

*Simile 1 Saund.* 120.

*ff.* For a Counsellor at Law, concerning *Aliter*. Words of Falsity in his Counsel. Co. Ent. 22.

*ff.* For an Auditor, charging him with Co- Auditor. zenage in taking Fees. Win. Ent. 70.

*ff.* The like concerning Words of Perjury. Perjury. Co. Ent. 26. Hern. 111.

*ff.* For Words of Perjury spoken of a Coun- *Simile*, of a sellor at Law, Surveyor of the King's Land, Counsellor. a Justice of Peace, and twice elected for a Knight of the Parliament. Co. Ent. 21.

*ff.* Against an Attorney, for executing Re- Attorney. gisters Office, and taking Fees. Winch. Ent.

22. 10 Co. 58.

*ff.* For a Steward of a Mannor, hinder'd in Steward. executing his Office. Vidian 5. Read's Dec. 138.

2 Instr. Cler. 708. Rast. Ent. 5. 9 Co. 42. Hern.

232, &c. Cl. Aff. 275.

*ff.* For an Herald at Arms, for Words of Herald at Perjury. 1 Brownl. 259. Hern. 193. See af. Arms. ter, *De impositione Crimen Felonie*.

*ff.* For an Herald at Arms disturb'd in his *Aliter*. Office, granted to him by the King for Life.

Rob. Ent. 54.

*ff.* *Simile* for a Serjeant at Arms, attending Sergeant at the Speaker of the House of Commons in Par. Arms, liament. Vidian 38.

*ff.* For an Officer of great Trust, concern- Cozenage. ing Words of Cozenage in his Office. Winch.

Ent. 70.

*ff.* For an Earl, disturb'd in the Office of For an Earl. Steward of divers Mannors granted to him for Life. Bro. Red. 483. Vide Rast. Ent. 5. Hern.

232.

*ff. For*

**Lord Mayor  
of London.**

*ff. For the Mayor of Landon, for disturbing his Deputy in measuring Coals. Hern. 102, 141. 3 Brownl. 66. Bro. Red. 119. Hern. 102, 141.*

**Clerk of the  
Treasury.**

*ff. For the Under-Clerk of the Treasury, against a Clerk of the Treasury, and *Custos brevium*, for disturbing him in receiving the Fees and Profits of his Office. Vidian 18.*

**Alderman.**

*ff. Upon a *Plur. Mandamus*, for disturbing the Plaintiff in his Office of an Alderman of W. Read's Dec. 144.*

**Town-Clerk.**

*ff. For an Attorney, being a Town-Clerk, disturb'd in the Exercise of his Office, and deprived of his Fees and Profits belonging to him, &c. 1 Brown. Ent. 59.*

**Collector of  
Taxes.**

Saying, That the Collector of Taxes had alter'd the Figures in the Book of Assessments. *Bro. Red. 71.*

## C H A P. XIX.

*For and against the Sheriff and his Officers, &c al'.*

*ff.* In Consideration, that the Plaintiff would procure one *E.* hiding in *London*, to be arrested at the Plaintiff's Suit for Debt; Defendant promised to pay 10*s.* in Hand, and 6*l.* after, upon Request. *Bro. Rediviv.* 40.

*ff.* For the Sheriff, against one taken in Execution; who, in Consideration that the Plaintiff would admit him to go at large with two Servants, promised to render himself self at a Day. *Rob. Ent.* 96.

*ff.* By a Gaoler, against a Prisoner for breaking the Gaol. *2 Mod. Intr.* 95.

*ff.* For a Sheriff against the Gaol-Keeper, Sheriff against through whose Negligence the Prisoners escaped. *Reg. Orig.* 110.

*ff.* For the Sheriff, against a Prisoner escaped Prisoner, out of Execution. *1 Lut.* 64.

*ff.* For the Sheriff against Rescussor, upon Rescussor, a *Non omittas Ca' sa'.* *Hern.* 68. *Simile Rob.* *Ent.* 12. *Bro. Red.* 48, 49, 59. *Hans.* 8, 32, 47. *Ro. Ent.* 21.

*ff.* For disturbing the Sheriff in executing a Disturber. Statute Staple, by shutting the Doors against him and the Jury, so that he could not have a View of the Goods. *Co. Ent.* 12. See after.

*ff.* For the Keeper of a Gaol, against one Escaper, committed by Auditors for the Arrearages of an Account, who made an Escape, whereby the Plaintiff satisfied the Money. *F. N. B.* 95, 130.

*ff.* For

Against a  
Bayliff.

*ff.* For a late Sheriff, against the Bayliff of a Hundred, who by the Plaintiff's Warrant levied Money payable in the Exchequer, and paid it not to the Plaintiff. *Hern.* 165. *Rob. Ent.* 15.

*De Franchises  
Lesis.*

*ff.* For the Lord of a Barony, having Execution and Return of Writs within his Barony by Prescription, against one that arrested a Man within his Barony. 1 *Brownl.* 70. *Vidian* 55.

*ff. Aliter pro Guardiano & Ballivo Libertatis,  
&c. Thomps.* 42.

*ff. Simile pro aliis. Hern.* 103, 225. *Winch.* *Ent.* 83. *Bro. Red.* 47, 49.

*Simile, pro  
Mayor.*

*ff.* By the Mayor of York, against a Sheriff's Bayliff, for arresting one within the Limits of the Cathedral Church. *Simile pro Episcopo per Prescript.* 1 *Brownl.* 254. *Hern.* 224. *Ast.* 34.

*Simile, pro  
Distress.*

*ff.* For distreying Cattle within an Honour, and impounding them out of it. *Reg. Orig.* 104.

Rule of Mis-  
demeanor by  
Officers.

It is noted for a Rule, That if a Sheriff, or other Ministerial Officer of any Court, shall make a false Return, or shall otherwise misdemean himself, by any Malefeazance, Non-feazance, or Misfeazance whatsoever, the Party that hath any Special Damage by it, may have an Action on the Case.

Enterin an  
Action.

*ff.* For enterin an Action in an Inferior Court, and procuring of Judgment to be entered, and the Plaintiff to be taken in Execution without any Notice thereof. 1 *Lut.* 67.

Arresting a  
Mayor.

*ff.* For arresting the Plaintiff without Cause, being Mayor of London. 1 *Lut.* 68.

*ff. By*

*ff.* By the Marshal, against the Warden of Against Ward of the Fleet, for an Escape of one committed in Execution. *2 Bro. 13.*

*ff.* Against a Deputy-Aulnager, for deceit- Aulnager. fully affixing a Kersey-Seal instead of a half Cloth-Seal, whereupon the Plaintiff's Cloth was seized as forfeit. *Vidian. 52.*

*ff.* Against a Filazer of C. B. for prosecuting Filazer. a Writ of Entry, &c. of Lands held in ancient Demesn. *Bro. Red. 53.*

*ff.* Vers' Escheatorem, concerning an Inquisition not taken by the Oaths of the Jury, but returned on his own Head into Chancery, by which the Plaintiff was amoved from the Possession of a Manor, demised to him by the Guardian of an Heir. *Reg. Orig. 115.*

*ff.* Against a Chirographer de Banco, who Chirographer did badly endorse the Proclamations upon a pther. Fine, by which the Plaintiff lost the Lands in Formedon. *Co. Ent. 15.*

*ff.* Against a Clerk of the Errors, for Ex- Clerk of Errors. tortion upon an Outlawry after Judgment. *1 Brownl. 266. Rob. Ent. 90.*

*ff.* Against a Steward of a Hundred, who Steward caused the Plaintiff's Cattle to be taken out of his Custody in Replevin, without Pledges found to prosecute and return them. *2 Brownl. 208. Bro. Red. 25.*

*ff.* Against the Bayliff of an Inferior Court, Bayliff of Inferior Court. who withdrew himself when an Inquisition ought to have been taken, after an Attachment of Goods for Debt, whereby the Plea was discontinued, and the Goods delivered, the Debt being unsatisfied. *Reg. Orig. 99. Bro. Red 73.*

Of Court of  
a Liberty.

*ff.* Against a Bayliff of the Court of a Liberty, who upon Summons returned, That the Plaintiff *nihil habuit*, and caused him to be taken and imprisoned upon a *Capias*, until he made Fine. *Rast. Ent.* 11.

Of the Mar-  
shal's Court.

*ff.* Against a Bayliff of the Marshal's Court, who permitted one arrested at the Plaintiff's Suit to go at large. *Reg. Orig.* 111.

Of a Liberty  
in Middlesex.

*ff.* Against a Bayliff of a Liberty in *Middlesex*, for an Escape of one arrested upon a *Cap'* in Trespass, after a *Pone* in *B. R.* *Upp. Bench Pres.* 49. The like upon a Bill of *Middlesex*. *Id.* 236.

Of a Hun-  
dred.

*ff.* Against a Bayliff of a Hundred, who neglected to arrest one present by a Warrant upon an *Al' cap' in trans'*. *3 Brownl.* 40.

Mayor and  
Bayliffs.

*ff.* Against a Mayor and Bayliffs, concerning an Escape of one arrested by Plaintiff in Case. *Hern.* 89.

Mayor and  
Commonalty.

*ff.* Against a Mayor and Commonalty, &c. for a false Return of a *Mandamus*. *Vidian.* 1. *Simile vers Magistrum & Socios Collegii*, for Expulsion, and a false Return. *Id.* 3.

Sheriff of  
London.

*ff.* Against the Sheriff of London, for an Escape upon a Plaintiff. *Hern.* 129.

*Simile*, for a  
Contempt.

*ff.* Against the Sheriff of a City, for a Contempt in not proceeding in a Plaintiff in the Court of the City, according to Three Writs of *Procedendo* to him delivered. *Rast. Ent.* 83.

Against the  
Keeper of  
*Ludgate*.

*ff.* Against the Keeper of the Prison of *Ludgate*, for the Escape of a Bankrupt, indebted to the Plaintiff, and committed by Commissioners. *Hern.* 184. *Rob. Ent.* 82.

Constable of  
a Castle.

*ff.* Debt against the Constable of the Castle of *Chester*, for the Escape of a Prisoner taken by a *Testat' Ca' Sa'*, Award to the Chamberlain of *Chester*. *1 Lutw.* 411.

*ff.* Against

*ff.* Against a Procurator, Summoner, or Procurator Apparitor. 12 Co. 128. 2 Bul. 264.

*ff.* For that the Defendant arrested R. at Not having the Plaintiff's Suit, in Debt; and, in Consideration of 20*l.* paid him by the Plaintiff, promised to have the Party arrested before the Justices the next Term, or to pay the Debt.

*Rob. Ent.* 104.

*ff.* For that the Plaintiff delivered to the Under-Sheriff a *Cap' Ut'l'*; and the Defendant, in Consideration of 40*s.* promised to arrest the Party before the Day, and to have him before the Justices at the Day in the Writ, or to pay 40*s.* and the Defendant arrested the Party, but had him not before the Justices.

*Bro. Rediviv.* 43.

*ff.* For a false Return of a Member of Parliament. 1 Lut. 82.

*ff.* Action on the Case for Return of a Man. *Mandamus.* 2 Lut. 1012. *Vide* 11. Co. 94.

*ff.* Action against the Sheriff for an Escape For Escape, upon a *Cap'*, without Security for Appearance. *Hern.* 129.

*ff.* For an Attorney against a Sheriff, upon *Simile*, by Attachment of Privilege in Debt. *Hern.* 128. *Simile up. B.* *Pres.* 50.

*ff.* Against the Sheriff of Middlesex, for an *Simile*, by Escape of one arrested by Bill of Middlesex, Executor, with Intention to declare in Debt for an Executor upon a Bond. *Up. B. Pres.* 47.

*ff.* For an Escape upon a *Cap' Ut'l'* before *Simile*, for Judgment. *Rast. Ent.* 8. 1 *Brownl.* 227. *Cap' Ut'l'*.

3 *Brownl.* 39, 94. *Ast.* 32. *Hern.* 74. 1 *Lut-wich* 108, &c.

*ff.* *Simile*; & *Languidus return.* *Hern* 167. *Simile, & Lan-*  
*guidus.*

*Simile*, after Judgment.

*ff.* For an Escape upon a *Cap' Utl'* after Judgment, and the Writ not return'd. 3 *Brownl.* 89. 1 *Bro.* 18. *Bro. Red.* 33. *Rob. Ent.* 190.

*Sur Cap' Excom'.*

*ff.* Simile for one taken upon a *Cap' Excommunicat'*, against whom was Sentence for Money not paid, concerning Tithes. 1 *Lut.* 122.

*Sur Statut'.*

*ff.* For an Escape upon a Statute Merchant. *Reg. Orig.* 98.

*Sur Cap' Utl'.*

*ff.* Against a Sheriff, who neglected to execute a *Cap' Utl'* upon one being present, and returning *non est inventus*. *Ast.* 57. 3 *Brownl.* 35. *Thomp.* 38.

*Sur Ca' Sa'.*

*ff.* Simile upon a *Cap' Utl'* Special, after Judgment. *Up. B. Pres.* 123.

Escape.

*ff.* Simile de *Testat' Ca' Sa'*. *Ast.* 30. Simile de *Statut' Staple*. *Hern.* 167.

*ff.* For an Escape upon a *Cap' ad computandum*. *Ast.* 13.

*ff.* Simile upon an Attachment of Privilege. *Cl. Ast.* 261.

*Judic'.*

*ff.* Simile sur *Judic' in Trans'*. *Reg. Orig.* 98.

Not returning *Fi' Fa'*.

*ff.* Simile upon a Proces out of a Mayor's Court. 1 *Bro.* 49.

*ff.* Simile upon a Plaintiff levied in the Compter. *Rob. Ent.* 298, 308.

*ff.* Against a Sheriff, who executed a *Fieri Facias*, and paid not the Money to the Plaintiff, nor returned the Writ. 3 *Brownl.* 86.

*Nor Vendition' exponas*

*ff.* Against a Sheriff, who upon a *Fi' Fa'* returned, that he had taken Goods *ad valentiam*, which remained unsold, and did not return a *Vendition' exponas* delivered to him, but converted the Money to his own Use. 1 *Brownl.* 233. *Bro. Red.* 36.

*Nihil habet.*

*ff.* Against a Sheriff, who returned, That the Plaintiff had nothing, whereas he had Lands. *Reg. Orig.* 98.

*ff.* For

*ff.* For returning *Languidus in Prisona.* Rob. *Languidus.*  
Ent. 9.

*ff.* The like upon a false Return upon a *Sci' Fa'* False Return  
*Fa'*, *quod scire fecit, ubi non scire fecit.* Reg. Ju. *fur Sci' Fa'*.  
dic. 9, 10.

*ff.* Against a Sheriff, who, upon a *Scire Fa'* Simile, *quod cias* of a Testator's Goods, returned *nulla bona, nulla bona,* &c. whereas the Executor afterwards wasted the Goods, and died. Hern. 170.

*ff.* *Nulla bona* by Bayliff of a Liberty, who Simile, executed the *Fi' Fa'*. Vidian. 6.

*ff.* Against a Sheriff, who impannelled the Impannelling Plaintiff in divers Juries, whereas he had not Plaintiff Land to the yearly Value of 4*l.* Hern. 84.

*ff.* Against a Sheriff, who executed a Writ Execution af- of *Seifin & Elegit* in Waste, after a *Supersedeas* ter Supersed'. upon a Writ of Error delivered to him. Hern.

213. Rob. Ent. 47.

*ff.* Concerning a Writ of *Exigent* after Not ret' *Ex' fa'*. Judgment not returned. Aft. 33.

*ff.* For taking above 12*d.* in the Pound for Extortion, executing a *Ca' Sa'*. Hern. 190.

*ff.* Against a Sheriff, for suffering an escap'd For second Prisoner (taken up by a Judge's Warrant, Escape, and committed to him) to make a further Escape. 1 *Instructor Clerical.* last pub. 377. &c.

*ff.* Against a Sheriff's Bayliff, who having taken *f.* in Execution at the Plaintiff's Suit, in Consideration of Money paid, and to be paid, promised safely to keep him, and to deliver him to the Gaol, if he would not satisfy the Plaintiff. Aft. 28.

*ff.* Against a Bayliff, who arrested the Plaintiff's Debtor upon a *Cap' Utl'*; and in Consideration of 8*s.* paid, and Charges to be paid, promised to bring the Prisoner to the

P 3 Gaol,

Not carrying  
Prisoner to  
Gaol.

*Simile, fur  
Cap' Utl'.*

Gaol, which he did not do, but suffered him to escape. 3 Brownl. 85.

Not return-  
ing Writs.

*ff.* Against a Bayliff of a Liberty, for not returning his Writs. 1 Bro. 42. Rob. Ent. 87. Vidian. 6. Vide Clerks Aff. 217, 262. See after.

Escapes.

*ff.* Simile for an Escape, reciting the whole Judgment thereon. Rob. Ent. 311. alit. Read's Dec. 89. Cl. Affit. 280. Vid. 40 Rob. Ent. 299, 309.

Escape.

*ff.* Alit' for an Escape, and returning non est inventus. Br. Red. 52.

Undertook  
Appearance.

*ff.* Vers' Ballivum Libertat', who arrested the Party, and for a Consideration promised he should appear at the Day, or that he would pay the Debt. Rob. Ent. 104.

Bayliff's Ser-  
vant.

*ff.* Against the Servant of a Bayliff of a Liberty, who promised to arrest a Man upon a Latitat. Id. 102.

Sergeant.

*ff.* Against a Sergeant of the Compter, for an Escape. Bro. met. 21.

Warden.

*ff.* Against the Warden of the Fleet, upon an Escape. Re. Dec. 93.

Marshal B.R.

*ff.* Against the Marshal of the King's-Bench, where a Prisoner, by Hab' Cor', was committed to the Fleet, and afterwards, by another Writ, committed to the Marshal, &c. Rob. Ent. 306.

Simile.

*ff.* Against the Under-Marshall, who permitted one arrested at the Plaintiff's Suit to go at large. Rob. Ent. 300.

Escape.

*ff.* Against the Sheriff, for Escapes sur Cap' Utl. 1 Bro. 18. Bro. Red. 33.

*ff.* For an Escape upon Mean Proces. 3 Lev. Rep. 42, 43.

*ff.* Upon an Escape of one arrested upon a Bill Midd'x. Tho. 31. Hans. 48.

*ff.* For

*ff.* For not accepting a Common Appearance, where the Debt was under 10 l. 2 Mod. *ting Appear-*  
*Intr.* 106. *ance.*

*ff.* Against Sheriff's Bayliff, for not accepting good Bail offered to him upon an Arrest. *Simile, of good Bail.*  
*Bro. Red.* 63.

*ff.* For his returning to the Sheriff a Rescue For returning by the Party, whereas he made none. *Cf., Rescous.*  
*Man.* 182.

*ff.* Concerning Rescuers. *Rob. Ent.* 12, Rescuers.  
21. *Bro. Red.* 48, 49. *Mod. Intr.* 23. *Hans*  
8, 32, 47.

*ff.* The Defendant in Escape pleads, he did not permit the Party to go at large. *Pleadings.*

*5 Co. 89.*

*ff.* That he did not take the Defendant on *Alit'.*  
a Bill of *Middlesex.* *Ast.* 14.

*For the Pleadings and Justifications to Actions in Trespass, see a Treatise Entituled, The Law of Trespass.*

*ff.* Against the Sheriff, for an Escape upon Escape.  
a *Latitat.* *Rob. Entr.* 303.

*ff.* The like against the late Sheriff. *Ibid.*

*ff.* The like upon a *Ca' Sa'*, after a Recovery in Assault. *Id. 305.*

*ff.* For an Escape upon an Arrest in the Time of the late Sheriff, who delivered the Prisoner over. *Vidian.* 15.

*ff.* For not returning of Writs. *Cf. Ass. Return.*  
217, 262.

*ff.* For insufficient Security upon Arrest by Insufficient Bill of *Middlesex.* 2 *Saund.* 51. *Simile;* & Security. *Cepi Corp' Retorn' per Vic'.* *Id. 150.*

False Re-  
turns.

*ff.* For false Returns. *Thomp.* 38. *Rob. Ent.* 9, 24, 59, 61. 2 *Ventr.* 84. *Bro. Red.* 37, 38. *Simile*, 2 *Inst. Cler.* 186. *sur Return.* *devasta-*  
*vit.*

Process after  
*Supersedeas.*

*ff.* Against a Sheriff, who executed a Writ of Seisin, and an *Elegit* in Waste, after a *Supersedeas* upon a Writ of Error delivered to him, and allowed. *Rob. Ent.* 47.

False Return.

*ff.* Against a Bishop, for a false Return upon a *Fieri Facias*. 1 *Syd.* 279.

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C H A P.

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## C H A P. XX.

*Pro Attorney, &c.*

*ff.* IN Consideration that the Plaintiff would For an At-  
prosecute a Writ for removing an Action torney's Fees  
out of the Court of a Borough, and a Sub- in Cenc', &c.  
*peña* out of *Chancery*, and would exhibit a  
Bill, and prosecute the Suit thereupon, Defen-  
dant promised to pay. *Rob. Ent. 55.*

*ff.* For an Administrator against an Executor, *Simile*, by the  
in Consideration that the Intestate, being an Administra-  
Attorney, C. B. would prosecute an Original tor of an At-  
out of *Chancery* for *J.* against *M.* Testator  
promises to pay as well the Money laid out,  
as the Money payable for Fees, with Three  
like Promises. *Bro. Meth. nov. 9.*

*ff.* By an Attorney, for Fees and Solici- *Simile*, for  
ting, to pay all such Sums as he had expended. Fees.  
*Levinz Ent. 23. Simile, 2 Mod. Intr. 57.*

*ff.* For an Attorney of the Common Pleas, For Solici-  
in Consideration the Plaintiff would solicit ting, Labour,  
a Suit for the Defendant in *B. R.* he assumed  
to pay him a *Quantum meruit* for his Labour,  
and for his Costs and Expences laid out. *2 Bro.*  
*Ent. 8. Bro. Vad. nec. 58.*

*ff.* For an Attorney, against a Man and For Fees.  
his Wife, for Fees due by the Wife *dum sola*.  
*Bro. Vad. 57.*

*ff.* For an Attorney against an Attorney, Upon Fines  
as well for Fees and Labour, as for Money and Records.  
laid out in prosecuting Fines, enting Judg-  
ments, and perfecting Records. *2 Bro. Ent. 2.*

*ff. For*

By Adminis-  
trator for  
Fees.

Upon profe-  
cuting a Bill  
in Cancell., &c.

For Executor  
of Attorney,  
for solici-  
ting, &c.

For prosecut-  
ing a Writ  
of Error.

*Simile de Suits.*

*Quantum me-  
ruit.*

*ff.* For the Administrator of an Attorney, for Fees and Labour in prosecuting and defending divers Suits for the Defendant, as for Expences in the same, which the Defendant promised to pay. *Vidians Ent.* 50. *Bro. Vad.* 37, 59. *Hans Ent.* 4. *& insimul computasset.*

*ff.* For an Attorney of C. B. who, as Solicitor, prosecuted a Bill in Chancery for the Defendant's Brother; and in Consideration that he would procure a *Latitat* against T. the Defendant promised to pay the Money laid out, and for Fees due in his Brother's Suit, within 10 Days next following: The Defendant demurs. *Winch. Ent.* 30. *Simile, Rob. Ent.* 11. As also for Suits in the Court of Arches, and *Prerogative Court*, see after.

*ff.* For the Executor of an Attorney, in Consideration that the Testator would be Attorney and Solicitor for the Defendant, and would prosecute, defend, and solicit, divers Suits, and would lay out Money about the same, the Defendant promised to pay the Money laid out, and his Term Fees. *Winch. Ent.* 51. *2 Instr. Cler.* 157. &c.

*ff.* For an Attorney in B. R. in Consideration that the Plaintiff would prosecute a Writ of Error for the Defendant in B. R. he promised to pay him what he should lay out in such Prosecution, and also *quantum mereretur* for prosecuting the Suit. *Thomps. Ent.* 17.

*ff.* The like Promise for an Attorney retain'd to defend and prosecute several Suits for the Defendant. *Rob. Ent.* 28.

*ff.* A *Quantum meruit* for a Solicitor. *Read's Decl.* 5:

*ff.* For

*ff.* For an Attorney, where, in Consideration that the Plaintiff (as Attorney of *E. B.* Esq;) would not prosecute the Defendant, he promised to pay all the Fees due to the Plaintiff for prosecuting the said Defendant. *Clerk's Aft. 192.*

*ff.* An Attorney of *C. B.* declares, That For Expences in Consideration the Plaintiff would appear and Fees, for him and one *J.* in Debt, the Defendant promised to pay him the Money to be laid out, and the Attorney's Fees. *Hern. Plead.*

75.

*ff.* In Consideration that the Plaintiff would be Attorney of one *C.* and would prosecute a Writ of Covenant for a Fine, *deditus Pro. testatorem*, and Fine thereupon, the Defendant promised to pay the Money to be laid out, and 3*s.* 4*d.* every Term for a Fee. *Moil.*

*Pref. 65.*

*ff.* In Consideration the Plaintiff would be Attorney of one *N.* to prosecute a Writ and Action in *B<sup>2</sup>.* the Defendant promised to pay him his Term-Fees, and at the Assizes, and the Money laid out. *Aft. 65.*

*ff.* In Consideration that the Plaintiff would prosecute a Writ of Privilege for removing an Action against the Defendant out of the Court of a Borough, and a *Subpæna* out of Chancery, and would exhibit a Bill, and prosecute the Suit thereupon, the Defendant promised to pay, &c. *Hern. 195.*

*ff.* In Consideration that an Attorney would prosecute a *Subpæna* out of Chancery, Defendant promised to pay him the Money laid out, and 3*s.* 4*d.* for his Labour; and that if he would write and exhibit a Bill for the Defendant in Chancery, and would solicit the Cause there,

In Consideration he would not prosecute.

Pay Term-Fees, and at the Assizes, &c.

*Subpæna, and Suit in Canc', &c.*

For a *Subpæna*, Bill in Canc', Labour, Term-Fees, &c.

In Cons' he  
would retain,  
*&c.*

Would so-  
licit, *&c.*  
*simile.*

Clerk of B. R.  
to file Bail,  
*&c.*

Prosecute *La-*  
*titat.*

For a Prothono-  
notary's  
Clerk.

there, Defendant promised to pay him 3*s.* 4*d.* every Term for his Labour, besides the Money laid out. 1 *Brownl.* 209. *Bro Rediviv.* 26.

*ff.* In Consideration that the Plaintiff would retain an Attorney to appear for him the Defendant in *Chancery*, and would defend the Cause, Defendant promised to pay, *&c.* *Hern.* 178. *Simile, Rob. Ent.* 38, 39.

*ff.* In Consideration the Plaintiff would be Solicitor for the Defendant and his Brother in *Chancery*, and would procure a Bill to be exhibited, and a *Spa'*, Defendant promised to pay, *&c.* *Hern.* 163.

*ff.* The like of a Suit in the Court of *Arches, London*, and the like in another Ecclesiastical Court. *Ibid.*

*ff.* In Consideration that the Plaintiff, being a Clerk of *B. R.* would be his Attorney, and would file Bail for one *A. B.* Defendant promised to pay the Money laid out, and the Fees: And in Consideration that he would prosecute a *Latitat* for *R.* against *W.* Defendant promised to pay him 5*s.* 1*d.* for it. 1 *Brownl.* 222. *Bro. Rediviv.* 31.

*ff.* For an Attorney of *C. B.* retained to prosecute a *Latitat* for the Defendant against Three, and several Suits thereupon, *unde Ni' Pri.* 3 *Brownl.* 80.

*ff.* For a Prothonotary's Clerk, in Consideration that the Plaintiff would exemplify a Judgment upon a Verdict for the Defendant, he promised to pay the Money laid out, and for Labour. 1 *Brownl.* 198. *Simile, Bro. Rediviv.* 13. *Bro. Vad. mecum* 58,

*ff.* In

*ff.* In Consideration that the Plaintiff would *Pro trac' Nov'*. draw a Declaration in Covenant for the Defendant, he promised to pay *quantum mereretur*.

1 Brownl. 199.

*ff.* Vide Hern. 226. for an Attorney for So-  
licitors Fees. Solicitors  
Fees.

*ff.* Case for an Attorney for Fees: Bar, *Simile*, and no That he did not give a Note or Bill under his Bill deliver'd. Hand, according to the Form of the Statute.

3 Fac. I. Clift. 197.

*ff.* For an Attorney, concerning false Articles exhibited against him in the *Chancery*, where, upon the Defendant's Oath, there if-  
sued out a Writ for his good Behaviour, and the Plaintiff was arrested thereupon. *Hern.*

157.

*ff.* For scandalous Words written in Excep-  
tions in *Chancery*. *Bro. Red.* 72.

*ff.* For an Attorney indicted in *London* of Indicting of Perjury, and acquitted upon Trial. *Ast.* 24. *Perjury.*

*ff.* For an Attorney of C. B. for Words con-  
cerning the Stealing of a Gown. *Co. Ent.* 23. *Theft.*

*ff.* *Simile*, for Words, That he was put out of the Roll of Attorneys, and turn'd over the Bar. *Hern.* 106.

*ff.* *Simile*, concerning Words of Knavery and Perjury. *Hern.* 137. 2 *Bro. 19. Bro. Red.*

70.

*ff.* *Simile*, For Words of Falsity. *Hern.* *Falsity.*

111.

*ff.* *Simile*, For Words of Cozenage. *Hern.* *Cozenage.*

104, 127, 129. *Ast.* 18.

*ff.* For Words of Insufficiency, &c. *Thomp.* *Insufficiency.* 50. 2 *Mod. Intr.* 27.

*ff.* By an Attorney, for Words of Falsity Ambodexte-  
and Ambodexterity. 1 *Bro. 24. Cler. Man.* *Rity.*

156. *Hern.* 111.

*ff.* For

Forgery.	<i>ff.</i> For Words of Forgery, see Chap. 28.
Knavery.	<i>ff.</i> For Words of Knavery and Theft 1 Bro. 79. Hern. 137. Hans. 26. 2 Bro. 19. Bro. Red. 51, 70.
Perjury.	<i>ff.</i> Simile, For Words of Perjury. Clif. 104.
Bribery.	<i>ff.</i> Simile, For Bribery. Placit. Gen. 30.

*Con' Attorn', &c al'.*

For appearing *ff.* Action against an Attorney, who appeared without a Warrant for the Plaintiff to an Original without Process: *Hern.* 145, 180. *Ast.* 38. *Vide* 1 *Bro.* 26. *Rob. Ent.* 37. *Bro. Red.* 47. *Clerk's Aff.* 286.

*Simile.* *ff.* For maliciously prosecuting and taking the Plaintiff upon a *Ca' Sa'*, in another's Name, without a Warrant. *Br. Red.* 47.

*Simile.* *ff.* The like upon an *Ex' Fa'*, whereupon a Declaration, and Judgment in Debt, and the Money paid. *Hern.* 143. *Rob. Ent.* 15.

*Negligence after Li'llo.* *ff.* The like, whereupon a *Li'llo*, Non inform', *Sci' Fa'*, Execution by Default, and *Ca' Sa'*. 3 *Brownl.* 98. 2 *Instr. Cler.* 184.

*Simile, unde Utlegat' post Judicium.* *Rob. Ent.* 98.

*Simile, al Latitat.* *ff.* Against a Clerk of the Chief Clerks of B. R. who appeared for the Plaintiff upon a *Latitat* without a Warrant. 1 *Brownl.* 195. *Bro. Red.* 12.

*Not demanding Oyer, &c.* *ff.* Against an Attorney, who pray'd *Li'llo* in Debt upon Bond, without entring the Condition to perform Covenants, whereby the Plaintiff was not admitted to plead Conditions performed. *Hern.* 197. *Rob. Ent.* 59.

*ff. Con-*

*ff.* Concerning an *Ex' Fa'* in Debt prosecu- No Procla-  
ted, and no Proclamation delivered to the mation.  
Sheriff. *Hern.* 202.

*ff.* Against an Attorney, who being retain- Default in  
ed for the Tenant in Dower, made Default Date.  
after a *Lilo.* *Rast.* *Ent.* 2. *Vet. Int.* 51.

*ff.* Against an Attorney, who razed a Bill For razing.  
delivered to him, whereby the Plaintiff could  
not recover his Debt. *Ast.* 16.

*ff.* Against an Attorney, who, upon the Satisfaction.  
Receipt of a Principal Debt and Damages,  
the next Term acknowledged Satisfaction.

*3 Brownl.* 63.

*ff.* Against an Attorney, who delivered to Delivering  
the Obligor a Bond delivered to him to sue. Bond.

*Lat.* 122.

*ff.* Against an Attorney in the Court of a Not essoin-  
Hundred, who promised to essoin for the ing in *Cur'*  
Plaintiff in several Pleas of Debt; whereupon *Hand'*.  
he had Day given to wage Law, and did not  
essoin, whereby Judgments were obtained a-  
gainst the Plaintiff. *Reg. Orig.* 116.

*ff.* Against an Attorney in a Plea of Land, Default by  
who, by Collusion with the Demandant, Collusion.  
made Default at the Day given, whereby the  
Plaintiff lost the Land. *Reg. Orig.* 113.

*ff.* The like where he acknowledged the Acknowledg-  
Action in *Quare Impedit*. *Reg. Orig.* 116.

*ff.* Against an Attorney, who (in Conside- To pay, if  
ration that the Plaintiff would pay him all he did not re-  
such Sums as he, as his Attorney, should ex- cover.  
pend in prosecuting one *W.* at the Plaintiff's Suit upon Bond, and his Fees) promised, that if he should not recover the Sum in the Writing, to pay the Plaintiff the same of his the Defendant's own Money. *Rob. Ent.* 35.

*ff.* Against

- Not entring Issues.      *ff.* Against an Attorney, who took Fees and Money for Entries of Issues, but entred them not. *I Bro.* 33.
- Execution without Consent.      *ff.* For taking the Plaintiff in Execution at the Suit of *T.* without his Consent, and knowing the Defendant to have a Release. *I Bro.* 78. *Bro. Red.* 65.
- Simile.*      *ff.* Simile, at the Suit of *H.* after an Agreement made between the Plaintiff and *H.* *Id.* 85.
- Promise giving a Warrant.      *ff.* Upon a Promise, That if the Plaintiff would give him a Warrant to confess a Judgment, he would procure him to be acquitted, and to withdraw the Writ. *Thomp.* 21. *Read's Decl.* 33.
- Counterfeiting Warrant.      *ff.* Against an Attorney, who counterfeited a Warrant upon a Capias. *Bro. Red.* 50.
- Suing Execution unduly.      *ff.* Against an Attorney, who procured Judgment to be signed upon a *Poſtea*, and took out *Fi' Fa'* against the Plaintiff, before the Time to shew Cause against the Judgment was determined. *Thomp.* 43.
- Pleadings.      *ff.* Where Attorneys justify by Retainer. *Aſt.* 39. *Hern.* 181, 183. *Cl. Aſt.* 289. *3 Inst.* *Cler.* 369. *Rob. Ent.* 18, 20, 38, 99.
- Neglect of Process.      *ff.* Against an Attorney in the Sheriff's Court, for not prosecuting *T.* at the Plaintiff's Suit, who for Default thereof was released, &c. *Vid. Ent.* 16.
- Simile.*      *ff.* Simile, for not procuring a *Fi' Fa'* upon a Warrant to confess Judgment. *Read's Decl.* 33.
- Simile.*      *ff.* The like against an Attorney, whereby the Defendant there recovered against the Plaintiff. *Cl. Aſt.* 278.

*ff.* Against

*ff.* Against an Attorney, upon an *Ex' Fac<sup>3</sup>* Simile. prosecuted in Debt, and no Proclamation delivered to the Sheriff.

*ff.* Against an Attorney, for not paying a Simile. Fine in Trespass, and not putting in a *Super-  
fedeas* to the *Exigent*, being retained. *i Bro.*

33.

*ff.* For unduly obtaining Judgment against Pleading a *H. B.* (who afterwards died Intestate) and false Judg- thereupon afterwards had Administration, and ment. pleaded the said Judgment, as a true Judgment, in Bar of the Plaintiff, *quorum pretextu*, &c. *Read's Dec.* 80.

*ff.* For an Attorney against an Attorney, Arresting, and for an Arrest and Imprisonment upon a Writ not prosecu- of Privilege, and procuring the Plaintiff to ting. be arrested at the Suit of others, and did not prosecute any Suit. *Rob. Ent.* 90.

*ff.* Where the Defendant and one *H.* set up Fraudulent a fraudulent Conveyance, to defraud the Plain- Conveyance, tiff of his Debt after Prosecution for it. *Read Dec.* 85, 86.

Q

CHAP.

## C H A P. XXI.

## Maintenance, Champerty, &amp;c. sur Statut.

- ff.* FOR maintaining an Action in Trespass in the Common-Pleas. *Rast.* Ent. 427, 428. *Reg. Orig.* 182, 189.  
*ff.* Simile, in Debt. *Rast.* 119, 427, 428.  
*ff.* Simile, in *Affise*. *Rast.* 120, 429.  
*ff.* Simile, in Prohibition. *Rast.* 427.  
*ff.* De *Secka* in *Cancellaria*. *Rast.* Ent. 119, 427.  
*ff.* In *Cur Christianitat' de Decimis*. *Rast.* 227.  
*ff.* De *Champertie* & *Maintenance Affise*, *Frisce*, *Forcie*. *Rast.* 119.  
*ff.* De *Champertie*, against the Purchaser of Lands, upon a pretended Title. *Upp. Bench Pres.* 253.  
*ff.* Of Champerty, by Promise to have half of the Land to be recovered, upon a pretended Title. *Id.* 254.  
*ff.* Not guilty of Maintenance. *Rast.* 428. *Repl.* That the Defendant gave his own Money to the Jury. *Rejo.* *Quod non.* *Id.* 429.  
*ff.* That he did it as a Kinsman, &c. *Rast.* 429.  
*ff.* That he did it as the Defendant's Servant, &c. *Rast.* 428.  
*ff.* That he did it by Vertue of a Letter of Attorney, &c. *Rast.* 429, 430.  
*ff.* Judgment for the Plaintiff upon Maintenance. *Rast.* 432.

*ff. In-*

*ff.* In Champerty, Bar, That he did not buy the Lands, &c. *Upp. Bench Pres.* 254.

*ff.* That he did not accept of the Promise, to have half of the Land to be recovered. *Upp. Bench Pres.* 255.

*ff.* That C. was indebted to the Defendant, and delivered him a Bill to receive Money thereon, and to prosecute a Suit for the same. *Rast.* 119.

*ff.* Judgment in Champerty. *Rast. Ent.* 120. *Aft.* 103.

*ff.* Defendant to an Action for Forgery pleads, That he did not forge the Writing ; and as to the Publication, That he was retain'd of Council. Plaintiff says, He did it *de In-juria propria* ; and traverses, he was retain'd of Council. *Rast.* 357. &c.

## C H A P. XXII.

Case upon Forbearance, and giving  
longer Time for Payment, &c.

For an Executor against  
an Administrator.

ff. PRO Exec' vers' Admin', ubi Intestat' fuit  
indebitat' Testatori; & in Cons' inde,  
Def' babens bona in manibus, assumpsit solvere  
Testatori sur Request'. Co. Ent. 2. 1 Bro. Ent.  
45.

Against Ba-  
ron and  
Feme, Exec'  
of W.

ff. Vers' Baron & Feme, lou' W. jacens in ex-  
tremis, requisivit Uxorem, quam fec' Exec', sol-  
vere Quer' denar' in quibus fuit ei indebitat';  
Et illa post mortem Viri babens interesse Termini,  
in cons' quod Quer' non molestaret vel sectaret eam,  
sed differet Solutionem usq; Festum, assumpsit sol-  
vere vel assignare Termin' pro Securitate. 9 Co.  
91.

Against an  
Administra-  
trix, upon  
Forbearance.

ff. Vers' Vid', ubi Vir obligat', Quer obiit in-  
testat', & Administratio commissa Def', quæ pos-  
sess' fuit de bonis sufficien', ad solvend' Quer' ultra  
Funeralia. Et Quer' intendisset implacitare Def',  
quæ, in cons' quod Quer' daret ei tempus mensis  
pro Solution' denar' in Condition', assumpsit solvere.

3 Brownl. 49.

As well for  
her own, as  
Intestate's.  
Debt.

ff. Vers' Baron & Feme, ubi quondam Vir fuit  
indebitat' Quer' pro Cervisia vendit', & Uxor fuit  
Adm', quæ post Mortem Viri computavit cum  
Quer', tam de Debito Viri, quam de Debito proprio,  
pro al' Cervic' ei vendit' post Mortem Viri, & af-  
sump' solvere tot'. 3 Brownl. 101.

ff. Vers'

*ff. Vers' Adm'*, ubi Intestat fuit indebitat' Simile, Inter-  
*Quer' per Script'*, & Def' post Adm' c.m. state being  
*mifſ'*, in cons' quod Quer' daret ei tempus ſoluc' indebted by  
*uſq; Festum*, aſſumpſit ſolvere denar' cum Inter- Writing.  
*reſſe.* Aſh. 64. Simile, 1 Bro. Ent. 27, 65.

Vide poſtea.

*ff. Vide pro Exec' vers' Exec'*, de Sectis differ- Pro Exec' vers'  
*rend'*. Bro. Red. 88. 1 Brown. Ent. 15, 27, Exec'.  
 45, 65. Clerk's Man. 82. 2 Inſtruct' Cler.

164.

*Vers' Adm' de Sect' differen.* 1 Brown. Ent. Vers' Admin'.  
 34, 53, 56, 72. 2 Bro. Ent. 27. Vide poſtea  
 de Sectis.

*ff. That if the Plaintiff would not hinder If not hinder  
 the Defendant to take out Letters of Admini- Administra-  
 ſtration, nor implead him for the Debt, promi- tion.  
 ſed that the Plaintiff should not lose one Pen-  
 ny of the Debt.* 1 Bro. Ent. 34.

*ff. R. was bound by Bill in 9 l. for Payment He would  
 of 4 l. 10 s. and the Plaintiff intended to im- not molest R.  
 plead him for the Money, and gave the De- fendant Notice thereof, who, in Considera-  
 tion that the Plaintiff would not sue or molest  
 R. promised to pay the Debt.* 3 Brownl. 73.

*ff. For Payment of a Legacy, with Interest. Sur Legacy.*  
 1 Brownl. 201.

*ff. W. the Defendant's Brother, was indebt- If he would  
 ed to the Plaintiff in 15 l. for Money bor- give Defen-  
 rowed, of which he paid 7 l. In Considera- dant's Bro-  
 tion that the Plaintiff would give him Time ther Time.  
 of Payment till such a Feat for the Remain-  
 der, Defendant promised to pay it.* 3 Brownl.  
 105.

Q 3

f. was

J. indebted to Plaintiff, and defendant to J. promised to pay.

By Executrix, upon Time given.

Upon giving Time to J.

To Lord of a Manor.

Forbearance till next Day.

To pay former Debt, and *de novo*.

J. was indebted to the Plaintiff in 10*l.* and the Defendant was indebted to J. in 10*l.* who appointed the Plaintiff to receive it to his own proper Use; and the Defendant, in Consideration that the Plaintiff would give him Day of Payment, promised to pay. *Hern. 69.*

J. The Defendant's Husband deceased was indebted to the Plaintiff in 12*l.* and made the Defendant his Executrix, who, in Consideration that the Plaintiff would give her six Months Time for Payment, promised to pay. *Hern. 92.*

J. J. was indebted to the Plaintiff in 100*l.* to be paid such a Day; and the Defendant, in Consideration that the Plaintiff would give him further Time for Part unpaid at the Day, promised to pay within 14 Days, or sooner. *Aston 22. Vide postea.*

J. Where the Steward of a Manor set a Fine of 20*l.* upon the Defendant, for his Admission to Customary Lands: In Consideration that the Plaintiff, being Lord of the Manor, would give the Defendant Time till the next Court to be holden, he promised to pay. *1 Brown's Ent. 9.*

J. The Defendant being indebted to the Plaintiff in 56*l.* for Money received by the Defendant for the Plaintiff: In Consideration that the Plaintiff would forbear till the next Day following, he promised to pay. *1 Brown. Ent. 55.*

J. *Simile*, for Money laid out; and in Consideration the Plaintiff would stay 203 Days, he promised to pay on Request. *1 Brown. Ent. 75. Vide Rob. Ent. 100, 101.* to pay what formerly due, and what trusted *de novo*.

J. The

*ff.* The Defendant was indebted to the Plaintiff in 100*l.* and the Plaintiff did intend to implead him for the Money unpaid, and gave the Defendant Notice thereof, who, in Consideration that the Plaintiff would not sue him till he returned from *G.* promised to pay the Money. *Thomps. Ent. 24.*

*ff.* Where the Intestate was indebted to the Plaintiff upon a Bond, and the Plaintiff intended to sue the Defendant, Administrator for the Debt : In Consideration the Plaintiff would stay his Suit, and give Defendant Time of Payment until such a Day, he promised to pay. *1 Bro. Ent. 56. Hans. 36.*

To forbear  
till Defen-  
dant returned  
from *G.*

## C H A P. XXIII.

De Se~~cis~~.

To desist in Ejectment.

*ff.* IN Consideration the Plaintiff would desist to prosecute in Ejectment for a Month, Defendant promised to deliver Possession of the Premisses to the Plaintiff within a Month, and to pay the Arrears of Rent due. *Read's Dec.* 16.

By a Stranger.

*ff.* Assump~~s~~ by a Stranger for the Debt of the Defendant, in Consideration the Plaintiff would desist further Prosecution. *Read's Dec.* 45.

If retract an Action.

*ff.* In Consideration of retracting an Action from the Court of Admiralty against G. J. and L. G. being the Defendant's Creditors, he promised to pay the Plaintiff. *Clerk's Aff.* 189.

Paying in Hundred Court.

*ff.* In Consideration the Plaintiff paid the Defendant's Debt, being prosecuted in the Hundred Court, Defendant promised to pay the Money to the Plaintiff. *Clerk's Aff.* 270.

If he would desist for Rent.

*ff.* Defendant assumed to pay the Plaintiff the Debt due to him for the Rent of a Mill by S. in Consideration the Plaintiff would desist to implead the said S. *Bro. Rediviv.* 87.

In Consideration he would not prosecute his Appeal.

*ff.* A Controversy was depending in the Spiritual Court between the Plaintiff and Defendant, about repairing of a Chancel of the Church, in which, Sentence was pronounced for the Defendant: And the Plaintiff intending to appeal to the Court of Arches, in Consideration that the Plaintiff would repair the

the Chancery, and would not prosecute his Appeal, the Defendant promised to pay him

40 s. 2 Bro. Ent. 4.

*ff.* The Plaintiff recovered a Judgment in C. B. against R. and W. upon a Writing, and intended to implead them upon the Judgment; and the Defendant, in Consideration that the Plaintiff would not prosecute a further Suit against them, promised to pay the Debt at such a Day, and the Costs of Suit at such a Day. *Hans. Ent. 33.*

*ff.* In Consideration that the Plaintiff would cause the Trial at the Assizes to cease, and to cease, would not permit any further Process against the Defendant, he promised to pay 6*l.* for Costs of Suit within two Weeks. *Hans. Ent. 51.*

*ff.* In Consideration that the Plaintiff would not prosecute his Suit against the Defendant's Son, he assumed to pay the Debt. *Placit. General. 54.*

*ff.* Where the Defendant promised, That if the Plaintiff would pay him Part of the Damages recovered against the Plaintiff by E. F. in an Action of Slander, and would not prosecute the Defendant further, to discharge the Plaintiff from the Judgment recovered against him by E. F. *Rob. Ent. 106.*

*ff.* For an Administrator, where the Intestate prosecuted a Suit against the Defendant upon Two Promises: In Consideration that the Intestate would cease further Prosecution, Defendant promised to pay 30*s.* upon Request, for Expences laid out. *1 Bro. Ent. 15.*

*ff.* Against Baron and Feme Administratrix, where the Intestate was bound to the Plaintiff, and the Plaintiff, for obtaining his Debt, intended to prosecute; whereupon the Defendant

Defendant, when sole, had Notice, and in Consideration thereof, and that the Plaintiff would desist his Suit, she promised to pay the Interest forthwith, and the Debt in a reasonable Time. *Vidian's Ent.* 95. *Simile, Rob. Ent.* 105.

Where the Wife, whilst sole, was indebted.

*ff.* Against a Man and his Wife, where the Wife, whilst sole, was indebted to the Plaintiff in 35*l.* for obtaining whereof the Plaintiff did intend to prosecute the Defendants; and the Defendants, in Consideration that the Plaintiff would not prosecute, promised to pay 5*l. per Annum*, until 35*l.* should be fully paid. *1 Mod. Instrand.* 24.

By an Heir, upon his Ancestor's Bond.

*ff.* Where the Heir, in Consideration that the Plaintiff would desist to prosecute him upon his Ancestor's Bond, promised to pay the Money mentioned in the Condition thereof.

*2 Saund.* 134.

Not to prosecute in Trespass.

*ff.* In Consideration that the Plaintiff would not further prosecute the Defendant in Trespass, Defendant promised to pay the Plaintiff 42*l.* *Clerk's Man.* 124.

Not against Defendant's Brother.

*ff.* In Consideration that the Plaintiff would desist to prosecute the Defendant's Brother for 12*l.* Residue of a greater Sum, &c. *Read's Dec.* 43.

For Horse-hire.

*ff.* For deferring a Suit upon Money due for Horse-hire. *1 Bro. Ent.* 20.

Delivery out of Prison.

*ff.* In Consideration the Plaintiff would deliver the Defendant, being in Prison, at Plaintiff's Suit, Defendant assumed to pay, &c. *Clerk's Affit.* 265. *Bro. Red.* 87. See after.

Procure a Suit to be dismiss'd, would secure 40*l. per Ann.*

*ff.* In Consideration that the Plaintiff, being Master of the Court of Wards, would procure a certain Suit then depending in the said Court to be dismissed, promised to assure

40*l.*

40*l.* per *Annum* upon the Plaintiff, for the Life of the Defendant's Wife, and to pay him 100*l.* immediately after the Suit should be dismissed. *1 Bro. Ent.* 51.

*J. W.* was indebted to the Plaintiff in 10*l.* To pay the and Plaintiff intended to prosecute him for the Money unpaid, the Defendant, in Consideration that the Plaintiff would not prosecute his Suit, assumed to pay the 4th Part of the Debt, and to become Bound for the Residue. *1 Bro. Ent.* 52.

*J. Upon a Promise made for the Debt of another, in Consideration of Forbearance.*

*Rob. Ent.* 100.

*J. In Consideration that the Plaintiff, an Executor, would not put in a Record of *N.* not put in a Pri' for Debt to be tried, and agreed to deliver the Defendant all Writings and Bills made to the Testator, and to make a General Release, promised to pay the Money at Two Days.*

*3 Brownl.* 92.

*J. Against H. and J. his Wife, where one P. formerly the Husband of J. died indebted to the Plaintiff, and the Intestate being possessed of the Interest of Term in Reversion after Death, and Administration was committed to the Defendant J. who, in Consideration that the Plaintiff would stop his Suit, promised to pay him 50*l.* within 4 Years after the Term should come in Hand.* *Hern.*

69.

*J. W. gave several Legacies to the Plaintiff's Children, who intended to sue the Defendant Executor for the same; and the Defendant, in Consideration that the Plaintiff would procure the Children to stay their Suit, promised to pay the Plaintiff, for their Use, at such*

To pay Legacies, upon staying Suit, &c.

such a Feast. *Hern. 77. Vide Bro. Rediviv.*

15.

Upon staying Suit for a Legacy, Interest, &c. *ff. The Plaintiff did intend to sue the Defendant, an Executor, for a Legacy unpaid; and the Defendant, in Consideration that the Plaintiff would stay his Suit, and accept a Writing for Payment of 8 l. for the Interest thereof, and 5 l. borrowed, promised to pay the Legacy at such a Feast. Hern. 79.*

To discharge from a Cap' Usl.

In Consideration he delivered the Defendant.

If he would enter into a Statute, to account or pay 1000 l.

Defendant promised a Bond, but refused to seal, &c.

*ff. The Plaintiff being taken upon a Cap' Ut<sup>p</sup>, the Defendant, in Consideration of 22 s., promised to discharge him within 3 or 4 Days. Hern. 205.*

*ff. In Consideration the Plaintiff delivered W. H. who was arrested at his Suit out of the Sheriff's Custody, assumed to pay the Debt. Read's Dec. 55.*

*ff. The Plaintiff being indebted to the Defendant and others in 223 l. and being seised and possessed of a Messuage and Goods to the Value of 400 l. in Consideration that the Plaintiff would become bound to the Defendant in a Statute Staple of 500 l. and would permit them to extend the Premisses thereupon, Defendant promised to give an Account of the Premisses, or would pay the Plaintiff 1000 l. i Brown's Ent. 48.*

*ff. In Consideration that the Plaintiff would lend to one C. 10 l. for Six Months, the Plaintiff promised that he and one J. should become bound with the said C. to the Plaintiff in 20 l. for the Payment of 10 l. at a Day; and the Defendant refused to seal the Writing tender'd, and the Money was unpaid. Bro. Rediviv. 23.*

*ff. For*

*ff.* For not accepting a common Appearance, where the Debt was under 10*l.* 2*Mod.* ing Appearance. *Intr.* 106.

*ff.* Defendant was arrested at the Plaintiff's Suit, and promised to pay Law-Charges, and Charges, and give the Plaintiff a Load of Hay. 2*Mod. Int.* 63. give Hay.

*ff.* Case upon the Statute 23*Car.* 2. for Prevention of trivial and vexatious Suits, &c. to prevent Suits. *Bro. Vade mecum* 48.

### *ARBITRAMENT.*

*ff.* The Plaintiff and Defendant submitted Upon Pro-  
to Arbitrament concerning the Title of mise to per-  
Customary Lands; and the Defendant, in form an A-  
Consideration thereof, and of 6*d.* paid, and ward.  
of the Plaintiff's Promise to perform the  
Award, promised, That if he did not perform  
the Award, he would pay the Plaintiff 100*l.*  
*Co. Enr.* 3. *Simile,* 1 *Brownl.* 243. *Simile,*  
*Winch. Ent.* 470. 2 *Brown's Ent.* 25. *Bro. Re-*  
*diviv.* 41, 80, 113. *Vide Hans.* 13. 1 *Saund.* 28.  
*Thompf.* 19.

*ff.* There were Differences between the Plaintiff and Defendant, who submitted to Arbitrament; and in Consideration that the Plaintiff would cease all his Suits, the Defendant assumed to pay him 20*l.* if the Differences were not determined between the Arbitrators. *Rob. Ent.* 101.

## C H A P. XXIV.

*De Indempn' conservand'.*

*Upon Bond  
for Appearance to Indictment.*

*Simile, for Payment of Money.*

*Simile, and Plaintiff impleaded, &c.*

*To keep harmless upon Sheriff's Bond.*

*ff.* **T**H E Defendant required the Plaintiff to become bound to the Sheriff for the Appearance of *W.* indicted of Murder, and promised to keep him indemnified. *W.* did not appear ; whereupon the Sheriff, after the *Ni Pri*, obtained the Debt and Damages of the Plaintiff. *Rast. Ent.* 11.

*ff.* The Plaintiff, at the Instance of the Defendant, became bound with him for Money, and the Defendant promised to keep him indemnified, which he did not do ; whereupon the Plaintiff was lawfully compelled to pay the Money. *Rast. Ent.* 12. *1 Brownl.* 240.

*ff.* In Consideration that the Plaintiff would become bound for the Defendant in 20*l.* he promised to keep him indemnified, which he did not do, by Reason whereof the Plaintiff was impleaded in *B.* upon the Bond, and after Judgment paid the Money, to avoid Imprisonment. *1 Brownl.* 213. *Vide 3 Brownl.* 71. *Bro. Red.* 27.

*ff.* The Plaintiff became bound to the Sheriff for the Appearance of one *C.* at the Defendant's Suit, upon an Attachment of Privilege. The Sheriff was amerced in Defect of Appearance : The Defendant, in Consideration of 40*s.* promised to keep the Plaintiff indemnified from the Bond, which he did not do ;

do ; but the Sheriff impleaded him thereon.

3 Brownl. 103. Rob. Ent. 92. Clift. Ent. 79.

*ff.* The Defendant, in Consideration that As Surety for the Plaintiff became bound for the Defendant. Defendant's Debt, promised to keep him indemnified, and the Plaintiff's Goods were taken by a *Fi Fa* thereupon. Aft. 37. Rob. Ent.

92.

*ff.* R. was arrested by a Plaintiff in the Court Bail in the of the *Tower of London*. Defendant, in Con- *Tower Court*. sideration that the Plaintiff would be Bail for him, promised to give the Plaintiff 20*l.* if he should be damnified ; and the Plaintiff after Judgment was taken in Execution, and detained until he paid the Money. Hern. 121.

*ff.* T. demised Lands to the Plaintiff for a Term of Years under a Rent: The Defendant, in Consideration that the Plaintiff would assign him the Term, promised to pay the Rent, or keep the Plaintiff indemnified therefrom : That the Defendant did not pay the Rent, nor kept the Plaintiff indemnified, who was forced to pay the Money. 3 Brownl.

51.

*ff.* Where the Defendant agreed to sell the *Simile, in pul-* Plaintiff a Messuage, and assumed to keep *ling down a* him indemnified in pulling down the House, *House.* and one *B. R.* brought Trespass. Clift. 44.

*ff.* See concerning purchasing Lands, and Upon Promises to make sufficient and lawful Estates, *ses to make* *&c.* 1 Brown. 25, 29, 54. 2 Brown. 2, 3, 4. sufficient E- Clerk's Aft. 209, 264. Placit. Gen. 16. Bro. Red. 24. Hans. 51, 55. Rob. Ent. 6, 10. Winch. Ent. 65, 73, 93.

*De Indemn' conservand'; & Bar inde.*

Bond to save  
harmless.

*J.* To save the Plaintiff harmless from a Bond made to the Queen for Performance of an Office, Defendant pleads a former Bond to the Queen, and that he performed all in the Condition on his Part. Plaintiff demurs. *Winch. Ent. 327.*

Conditions  
performed.

Condition to  
perform Ar-  
ticles.

Money was  
paid.

Defendant  
paid the Mo-  
ney.

*Simile,* and  
Issue.

*Non damnifi-  
cat.*

Paid, upon  
Plaintiff's  
Request, in  
Discharge,  
&c.

*J.* Condition that *J.* should perform Articles made between him and one *H.* and that the Defendant should keep the Plaintiff indemnified from the said Articles. Bar, That the Articles were made for Payment of Money by *J.* to *H.* which *J.* had paid. Plaintiff demurs. *Winch. 187.*

*J.* Bar, That the Defendant paid the Money, *& sic Indemn' conservavit Quer'.* Repl. That he did not pay it, and Issue. *Thomps. Ent. 184.*

*J.* The like, with Replication, Rejoinder, and Issue. *Brown. Red. 193, 194, 257. Thomps. 426. Placit. Gen. 340. 1 Inst. Cler. 218, 338: Hans. 118.*

*J.* Not damned by Three Writings specified in the Condition, nor by any of them, nor Suit in Law thereupon. *Hern. 302.*

*J.* That a Creditor obtained Judgment against the Plaintiff in *B. R.* and the Defendant, upon Request of the Plaintiff, paid the Money, in Discharge of the Judgment. Plaintiff demurs; and Judgment for the Plaintiff. *Coke Ent. 139.* The Defendant should have pleaded *Non damnificat* generally, and then the Recovery ought to have been pleaded on the other Part.

*J. Bar*

*ff.* Bar by Conditions performed, and so Conditions not damnified. Repl. by Non performance performed, of the Condition of one of the Twelve Bonds *& sic non, &c.* specified in the Bar. *Read's Dec.* 234.

*ff.* To a Bond upon Replevin : Bar, That the Defendant prosecuted a Plaintiff no yet ad- Plaintiff not yet judged, and that the Plaintiff is not damnified. adjudged.

*Clift's Ent.* 191.

*ff.* Bar per *non damnificat'*. Repl. That the Money was unpaid, and the Obligee made an Executor, who arrested the Plaintiff by a *Latitat*, and detained him until he paid the Money, with Costs. *3 Brownl.* 174.

*ff.* Like Bar. Repl. That the Money was unpaid ; and the Obligee prosecuted the Plaintiff upon the Bond to the *Exigent*. *1 Mod. Exigent.*

*Intrand.* 195.

*ff.* Bar, That no Notice or Request was made in Writing to keep him indemnified. *No Notice to keep, &c.*

*Clift's Ent.* 147.

*ff.* Bar per *non damnificat'*. Repl. *quod de-* That he was *nar' non fuer' insolut'* : Whereupon the Obligee threaten'd, threaten'd and endeavour'd to arrest him ; and forced. wherefore he paid the Money, and so was damnified. *Vide Aft. Ent. 247. alias 279.*

*ff.* The like Bar. Repl. That the Money was unpaid ; and the Plaintiff, for avoiding Suits and Incumbrances, paid the Money to the Obligee, *& sic damnificat'*. Rejoinder and Issue, *quod non solvit*. *1 Mod. Intr.* 193.

*ff.* Bar per *non damnificat'*. Repl. That the Obligee recovered a Judgment against the Plaintiff, upon a Bond in the Sheriff's Court of London, *& sic damnificat'*. Rejo. *per nul' tiel Record.* Surrejo. *quod habetur tale Record,* and a Writ to certify the Record. *1 Bro.* 194.

Simile.

*ff.* The like Bar. Repl. by a Judgment recovered against the Plaintiff in *B. R.* Rejo. That the Judgment was obtained by Fraud. *Thomps.* 145.

He was prosecuted as Bail.

*ff.* Repl. That *N.* in *C. B.* recovered 37*l.* for Damages against the Defendant; and the Plaintiff being his Bail, *N.* prosecuted a *Scire Facias* against the Plaintiff, and had Judgment, and so the Plaintiff was damnified. *Thomps.* 171. *Vide Cro. Jac.* 363. *2 Bul.* 270. Defendant pleads, That he freely and absolutely discharged his Bail, and shews not how; 'tis ill: *Ali' if he had pleaded non damnificat'.*

Was prosecuted in Stannary Court.

*ff.* Bar per *non damnificat'*. Repl. That the Money being unpaid, the Obligee prosecuted the Plaintiff in the *Stannary Court*, and he was taken, and detained until he found Bail; whereupon, to avoid Costs and Vexation, he paid the Money, & *sic damnificat'*. *Winch. Ent.* 236.

Was forced to expend 30*s.*

*ff.* Bar per *non damnificat'*. Repl. That the Woman, Obligee, took a Husband, and afterwards they sued an Original, and *Cap'* upon the Bond for the Money unpaid: Whereupon the Plaintiff, for his Discharge from the Bond, and Payment of Part of the Money, expended 30*s.* & *sic damnificat'*. Rejo. That the Defendant, after the Original, and *Cap'* prosecuted for the Plaintiff's Discharge, paid the whole Debt and Costs, and delivered the Plaintiff the Writing to be cancell'd, and traverses, that he expended 30*s.* and Issue tendered thereon: *Sed Def' nihil dicit.*

*ff.* The

*ff.* The like Bar. Repl. That the Money He was compelled to pay was unpaid; whereupon the Plaintiff, for his Discharge from the Writing, was compelled to pay. Rejo. protesting, &c. for Plea says, That the Obligee before the Day released the Defendant. Demur Special thereupon, for a Departure from the Bar. *Bro. Rediviv. 228.*

*ff.* Condition to save indemnified the Inhabitants from Tithes. Bar, by Conditions performed. Repl. That he was damnified by a Suit in the Spiritual Court. Defendant demurs. *Clerk's Affit. 408.*

*ff.* Upon the Plaintiff's becoming bound with the Defendant for the Defendant's Debt, Defendant promised to save him harmless. *I Brown. Ent. 32, 40, 68. Bro. Met. 8. Bro. Red. 27, 39. Read's Dec. 59. Hans. 45. Bro. Vad. nec. 4.* Upon Plaintiff's being bound for Defendant.

*ff.* Upon Plaintiff's becoming Bail for the Defendant's Appearance at the Sessions. *Cf. defendant's Aff. 216.*

*ff.* Upon Defendant's being a Prisoner, and the Plaintiff's becoming bound for the Debt and Damages. *I Bro. 74. Cl. Aff. 215.* Bound for him as Prisoner.

*ff.* Upon the Plaintiff's giving the Defendant Leave to prosecute an Ejectment, &c. *Leave to prosecute. Thomp. 12.*

*ff.* Upon a Bargain of Cattle by Defendant, and Defendant's being his Surety for Payment upon the Delivery of them to Defendant. *I Bro. 32.* Security upon a Bargain.

*ff.* Upon a Promise to keep the Plaintiff harmless for taking a Distress. *Clift. Ent. 80.* Upon taking a Distress.

*ff.* In Consideration he would, at Defendant's Request, become bound with R. to N. in 20*l.* for Payment of 10*l.* *Bro. Vad. 4.* If he became bound with R.

Bail.

*ff.* For that the Defendant did not discharge the Plaintiff from being Bail. *Cl. Aff. 215.*

Upon a Bar-gain.

*ff.* For that the Defendant did not discharge the Plaintiff from paying for Agistment of Cattle sold to the Plaintiff by the Defendant.

Promised to seal a Counterbond.

*ff.* For that the Plaintiff would become bound with the Defendant to one *M.* Defendant promised to seal him a Bond to save him harmless. *1 Bro. 69.*

To save Parish harmless from a Bastard Child.

*ff.* Condition to save the Parish harmless from an Infant Bastard, with which *E.* the Defendant's Daughter, was then big. *Bar, per non damnificat'.* Repl. That *E.* the Daughter, had a Boy unlawfully begotten, and by Order of the Justices, at the General Sessions of the Peace, the Inhabitants of *C.* were charged with the keeping and maintaining thereof, and still maintained it at their own Charge. Defendant demurs. *Winch. Ent. 325.*

*Simile,* upon a Bond given to the Governor of Bridewell.

*ff.* The like Condition to save harmless, as well the Mayor, Community, and Citizens, of *L.* as the Parish of *A.* upon a Bond by the Governor of the Hospital of *B.* Defendants plead the Letters Patents for the Incorporation of *Bridewell*; and that it does not appear by them, that the said Governors have Power to take or sue such Bonds. Plaintiffs demur; and Judgment for the Plaintiffs. *Winch. Ent. 328. Vide 1 Saund. 83. &c.*

Repl. That he paid 100*l.* for the Defendant's Son, & sic damnificatur.

*ff. Non damnificat' to a Special Condition.* Repl. protest' quod non indempn' conservavit pro placito: That the Plaintiff disposed, and paid for the proper Use of *G.* the Defendant's Son, 100*l.* which the Defendant had not repaid him, & sic damnificat'. Issue, That he paid it. *1 Mod. Intr. 193.*

## C H A P. XXV.

*Some Precedents of Disceit in Law Suits,  
and imposing of Crimes, &c.*

*ff.* **A**S concerning suing forth a Writ in the Suing in Name of the Plaintiff, not knowing Plaintiff's thereof. *Reg. Orig. 112.*

*ff.* The like in *Quare Impedit*; whereupon *Simile*, in was a Non-Suit, whereby his Clerk was a *Quare Impedit*. mov'd. *Reg. Orig. 112.*

*ff.* Of a Statute-Merchant, acknowledged Statute-Mer- by the Defendant in the Name of the Plain- chant in tiff, whereby he was afterwards taken. Plaintiff's *Reg. O. 112, 114, 115.* Name.

*ff.* Of counterfeiting Common Seals of Fra- Counterfeiting Common ternities, &c. *Reg. O. 112, 114, 116.* Seals.

*ff.* For procuring a Stranger to come in the Plaintiff's Name, and acknowledge a Plea. Acknowledg- *Reg. O. 113. bis.* ing a Plea.

*ff.* For causing a Judgment to be removed from Court to Court, under Colour of Pro- Removing Judgment cess, by which Execution was put off. *Ibid.* from Court to Court.

*ff.* Against a Master and Servant, for pro- Servant re- curing the Servant to be recorded for the Plaintiff's Attorney in a Plea of Land, pro- secuted by the Master against him, whereupon Plaintiff's the Essoin was challenged. *Reg. 67, 114.* Attorney.

*ff.* For a Cognizor of a Statute-Merchant Who taking against the Cognizee, who after Execution Plaintiff after had of the Lands, and Satisfaction thereupon, Satisfaction. took the Plaintiff, &c. *Reg. Judic. 37.*

*Simile*, after Acquittance.

*ff. Simile*, after Payment and Acquittance.  
*Id. 62, 37.*

Judgment in one Name, & in another.

*ff. For that the Defendant, by the Name of R. Carew, recovered Damages against the Plaintiff and another ; and by the Name of R. Caro, obtained a Ca' sa', and caused the Plaintiff to be taken thereupon.* *1 Brownl.*

254.

Entering Judgment, &c. without Notice.

*ff. For entring of an Action in an Inferior Court, and procuring Judgment to be enter'd, and the Plaintiff to be taken in Execution, without any Notice of it.* *1 Lut. 67.*

Arrest, without Cause.

*ff. For arresting the Plaintiff without Cause, being the Mayor of London.* *1 Lut. 68.*

*Simile.*

*ff. For arresting the Plaintiff in the City-Court, having no Cause of Action.* *1 Bro. 38.*

Bail by false Names.

*ff. For procuring Strangers to become Bail by false Names for W. whereby W. was permitted to go at large, and the Plaintiff lost his Debt.* *1 Brown. 52.*

*Simile of a Bond.*

*ff. For that the Defendant made a Bond to the Plaintiff by a false Name of Baptism.*  
*Id. 27.*

Outlawing.

*ff. For procuring the Plaintiff to be maliciously outlaw'd in B.R. and taken thereupon.* *Id. 87.*

Secretly releasing, &c.

*ff. For an Attorney, who had recovered a Judgment against M. to whom the Defendant secretly gave a Release ; and the Plaintiff having no Notice, took M. in Execution , who impleaded the Plaintiff, and recovered Damages.* *Br. Red. 68. Bro. Vad. 39.*

Arrest.

*ff. For arresting the Plaintiff in a Court that had no Jurisdiction,* *Clif. 35.* *Simile secund' cons' Regni fundit.* *Ib.*

*ff. For*

*ff.* For detaining the Plaintiff in Prison Imprison-till he found Bail. *Bro. Red.* 61. *Clift.* 34. *Si-* ment till Bail mile, *vide Bro. Red.* 50. *Bro. Met.* 25. *Thomp.*

72. *Vidian* 36.

*ff.* For an undue Prosecution in Cur' Prin. Process in cipalitat' Wallie. *Rob. Ent.* 16. Wales.

*ff.* For attaching the Plaintiff, per *Catalla* Attachment. in Cur' Inferior, *Adjs. R. Hans.* 53.

*ff.* For that the Plaintiff was twice arrested Arresting against the Defendant's Promise. *Cl. Affit.* twice.

230.

*ff.* By an Attorney, for impleading him before Commissioners for Ecclesiastical Causes, concerning the Exercise of his Office. *Cl. Affit.* 255.

*ff. Simile pro Prosecut' in Cur' Christian' sine Simile in Spir' au/a Clift. 34.* Court.

*ff.* For arresting the Plaintiff in London for Arrest. Intamy. *Cl. Affit.* 213.

*ff.* For maliciously prosecuting a Ca' sa' in Ca' sa' sans' the Name of another, without Warrant. *Bro. garrants.*

*Red.* 47.

*ff.* For pronouncing the Plaintiff to be ex-communicated, without reasonable Cause. *Excommuni-cation.*

2 *Bro. 20. Thomp.* 59.

*ff.* For prosecuting the Plaintiff, upon a Sheriff's Bond, without Cause. *Clift.* 33. Bond.

*ff.* For defaming a Virgin, saying, She had Defaming a Baftard. 1 *Bro. 49. Cler. Aff.* 207. *Cler. Virgin.* *Man.* 168. 2 *Instr. Cler.* 78. *Tbo.* 45. *Rob. Ent.*

156.

*ff. Simile de Vidua and Batchelor.* 1 *Bro. Simile of a 62. Hans.* 11. *Thomp.* 57. See the next Chap. Widow, &c. ter.

## C H A P. XXVI.

*De Imposition' Crimen Felonia, &c.*

Charging Plaintiff with Felony, &c.

*ff.* FOR charging the Plaintiff with Felony, bringing of him before a Justice of Peace; and further examining of him before the Justices at the Sessions. *Hern.* 71, *Rob. Ent.* 339. *Simile, Vidian* 145. *1 Bro.* 76.

*Simile* with Theft, and Detainer till Bail.

*ff.* Concerning Words of Theft, by Reason whereof the Plaintiff was arrested for Suspicion of Felony by the Mandate of the Justices in *London*, and detained until he found Bail to appear at the next Sessions of the Peace, at which he was dismissed by Proclamation. *Rast. Ent.* 12.

For Cow-stealing.

*ff.* The like for stealing Two Cows. *1 Bro.* 125.

Exhibiting false Bills.

*ff.* For false Bills exhibited against the Plaintiff, concerning the false Inrolment of Pleas in *C. B.* and for procuring the Plaintiff to be often examined thereupon. *Rast.* 13.

False Articles.

*ff.* For false Articles exhibited in Chancery against an Attorney. *Rob. Ent.* 75.

Affixing scandalous Bill.

*ff.* For a scandalous Bill against the Plaintiff affixed to the Church-Door. *Rast.* 13.

Scandalous Petition.

*ff.* For a Scandalous Petition exhibited against the Plaintiff to the Committee of Parliament. *Vidian* 36. *1 Saund.* 120.

*ff.* For

*ff.* For the King's Messenger, concerning a *simile*, against false and scandalous Petition exhibited to the King's Mes- Justices at the Sessions. *Hern.* 153. *Rob. Ent.* messenger.

72.

*ff.* For Words of Maintenance and Cham- Maintenance, perty. *Hans.* 61. *Cler. Man.* 166. &c.

*ff.* For a false Libel against a Counsellor. False Libel.

2 Bro. 22.

*ff.* For a Doctor of Physick, that he had Physick kill'd People. 1 Bro. 21.

*ff.* For informing against the Plaintiff of a Riot. riotous Assembly, and unlawful beating the Defendant. *Clift.* 27.

*ff.* For Words of Theft, by Reason where- Theft, of the Plaintiff was taken, and long imprison- ed. *Kit.* 252.

*ff.* For Words of Witchcraft. *Hern.* 112, Witchcraft. 222. *Hans.* 28. *Clift.* 106, &c. 2 *Instr.* *Cler.*

33.

*ff.* For Words of Murder and Theft. *Placit.* Murder, &c. *Gen.* 37. 2 *Instr.* *Cler.* 29, 53.

*ff.* For Words of murdering his Wife. *Hern.* Murder.

239.

*ff.* For a Man and his Wife, for Words of Murder and Murder and Adultery, spoken of the Wife Adultery. at several Times. 1 *Brownl.* 261. Adultery, 2 Bro. 18.

*ff.* For charging the Plaintiff to be a Tray- Traytor. 2 *Instr.* *Cler.* 27, &c. *Hans.* 29. *Placit.* *Gen.* 17. *Cler.* *Aff.* 221.

*ff.* For Words of Theft. 2 Bro. 26. *Bro.* Theft. *Vad.* 46. *Thomp.* 72. *Rob. Ent.* 70. 2 *Instr.* *Cler.* 44, 49. *Hans.* *Ent.* 16, 27, 28, &c. 1 *Saund.* 241.

*ff.* For a Rape. 2 Bro. 19. *Hans.* 57. 2 *Instr.* Rape. *Cler.* 36.

*ff.* For

- Poisoning.      *ff.* For Words of Poisoning. 2 Mo. Intr.  
 24. 2 Instr. Cler. 53, 58.
- French-Pox.      *ff.* For Words concerning the French-Pox.  
 2 Bro. 6. Mod. Intr. 26. 2 Instr. Cler. 82.

### *De Indictament.*

- Indicting Plaintiff at the Assizes, &c. Goods stealing.      *ff.* Concerning Words of Intoxicating, and indicting the Plaintiff at the Assizes, where he was acquitted. Co. Ent. 25.
- Indicting at a Special Sessions.      *ff.* For indicting the Plaintiff for stealing of Goods in Middlesex, whereof he was acquitted at Justice-Hall. Vidian 145.
- ff.* Concerning Imprisonment, and indicting the Plaintiff at a special Sessions for Theft, where he was acquitted. 1 Brownl. 207. Vide Winch. Ent. 74, 104. Simile, Rob. Ent. 341. Bro. Red. 25. Thomp. 36. 1 Bro. 121.
- Aliter for Felony.      *ff.* For imposing the Crime of Felony, and procuring the Plaintiff to be indicted upon the Defendant's Oath; whereupon he pleaded, and was acquitted upon Tryal. 3 Brownl. 109. Thomp. 43.
- ff.* Simile, pro Attorney. Winch. Ent. 74. Bro. Red. 22.
- Aliter for Felony.      *ff.* For imposing Felony upon the Plaintiff, and indicting him thereon. Aft. 26. 1 Bro. 3. Simile Read's Dec. 105, 131. Clift. 29.
- As Accessory.      *ff.* Simile de Accessor Felonie. Thomp. 35.
- ff.* Simile ad Assisas & Ignoramus superinde. 2 Bro. 17.
- Aliter, and charging him with Robbery.      *ff.* For carrying the Plaintiff before a Justice of Peace, and charging him with Robbery, who gave Recognizance to appear at the Assizes; and again charging him there with Robbery, and a Bill of Indictment upon

on the Defendant's Oath, and *Ignoramus* thereon. *Hern.* 96. *Simile Hans. Ent.* 30.

*ff.* For that the Defendant, by Conspiracy *Conspiracy*, with another, caused the Plaintiff to be taken and indicting for a Robbery, indicted him at the Assizes, charged him with Robbery, swore to the Bill of Indictment, and *Ignoramus* thereupon. *Hern.* 147. *Rob. Ent.* 68. 2 *Mod. Intr.* 100.

*Vide Hans. Ent.* 24, 53.

*ff.* For indicting the Plaintiff *de morte*, at For Death. the Assizes, and Acquittal thereupon. 1 *Bro.*

124.

*ff.* For indicting the Plaintiff of Barretry. Indicting for *Hern.* 88, 226. 1 *Bro.* 18. *Bro. Red.* 20. Barretry.

*ff.* Against Three, who caused the Plaintiff to be indicted of Barretry in London, *Simile at Newgate*, *gate Sessions*. whereupon he was acquitted at the Sessions of *Newgate*. *Upp. Bench. Pref.* 31. *Rob. Ent.* 340.

*ff.* For Conspiracy, to charge the Plaintiff For Murder. of Murder. 2 *Inst. Cler.* 53. *Co. Ent.* 23.

*ff.* For indicting the Plaintiff in another *In al Com.* County, where he did not inhabit. *Raff.*

126.

*ff.* For that the Defendant, by Conspiracy *Conspiracy* with others, caused the Plaintiff to be taken for Felony. for Felony, and indicted at the Assizes, *unde Ignoramus*. *Winch. Ent.* 104. *Simile Bro. Vad.* *Mec.* 42. & *placitum inde*.

*ff.* For a Clerk against Three, who caused him to be taken for ravishing a Girl, entring into a Recognizance to appear at the Sessions; and from thence a Recognizance to appear at the Assizes, a Bill of Indictment thereupon the Defendant's Oath, & *Ignoramus superinde*. *Winch. Ent.* 96.

For Ravish-  
ment.

*ff.* For

Simile.

*ff.* For the like, at the Assizes only. *Placit.*  
*Gen.* 48.

Simile.

*ff.* For indicting the Plaintiff for an Assault, and endeavouring to ravish the Defendant's Wife. *Clif.* 28.

For Sodomy.

*ff.* For a Clerk indicted at the Sessions for Sodomy, upon the Defendant's Oath, & *Ignoramus superinde*, 2 *Bro.* 21. 2 *Instr.* *Cler.* 37.

For Conjuration.

*ff.* For indicting the Plaintiff at the Assizes for Conjuration. 2 *Bro.* 24.

Simony.

*ff.* For Words of Simony. *Thomps.* 50.  
2 *Mod. Intr.* 32.

Upon Three Indictments.

*ff.* For indicting the Plaintiff upon 3 Indictments: 1. For stopping the Way *injuste & riotose*: 2. For entring his Lands *manu forti*: 3. For a Trespass, and cutting down his Fences. *Clift.* 24.

Stopping a Common Way.

*ff.* For indicting the Plaintiff, concerning his stopping a Common Way. *Id.* 31.

For Assault and Affray.

*ff.* For indicting the Plaintiff for an Assault and Affray, and *Ignoramus* return'd thereupon by the Grand Inquest. *Id.* 32.

For Excommunication.

*ff.* For pronouncing the Plaintiff to be excommunicated, without any reasonable Cause. 2 *Bro.* 20.

For Barn burning.

*ff.* For causing the Plaintiff, by Conspiracy, to be indicted and detained in Prison for burning a Barn with Wheat, &c. whereof he was acquitted at the Assizes. 1 *Bro.* 121.  
*Co. Ent.* 25. 2 *Instr.* *Cler.* 42.

Arrest without Cause.

*ff.* For conspiring to impoverish the Plaintiff, and causing him to be arrested at the Suit of one of the Defendants, without any Cause.

1 *Saund.* 128.

For Theft.

*ff.* Conspiracy to charge the Plaintiff of Theft. 2 *Instr.* *Cler.* 55.

## C H A P. XXVII.

*De Imposition' Crimen Perjurii.**Vide Chap. 26.*

*ff.* FOR Words of Perjury, where the Defendant impleaded the Plaintiff in Debt gager. Upon a Ley-  
in the County Court; whereupon the Plaintiff waged his Law, and thereupon the Defendant said, that he was perjured. *Hern.*

211.

*ff.* *Simile*, where the Plaintiff was ready to be sworn as a Witness in a Cause before the Mayor of London. *Simile, as a Witness, &c.* *Aff.* 20.

*ff.* *Simile*, spoken of the Plaintiff coming to be sworn as a Witness in an Inferior Court. *3 Brownl.* 107. *simile, in an Inferior Court.*

For scandalous Words spoken upon Interrogatories. *Upon Interrogatories.* *Hern.* 109.

*ff.* For Words of Perjury, spoken of one who was a Witness at a Trial between Party and Party at the Assizes. Verdict upon Not Guilty; and Judgment for the Plaintiff. *2 Lut.*

1288.

*ff.* For an Information of Perjury in B. R. *sur Information.* *Clift.* 25.

*ff.* For Words of Perjury, spoken of a Counsellor. Counsellor at Law, &c. *Co. Ent.* 21.

*ff.* For a Vicar, for Words of Perjury and Vicar. Theft. *Hern.* 113.

*ff.* For Words of Perjury, *vide 1 Bro.* 23, References. *63. Bro. Vad.* 44. *Thomp.* 47. *Rob. Ent.* 94. *Clift.* 102. *2 Mod. Intr.* 18. *2 Inst. Cler.* 61, 63. *Read's Dec.* 119, 123. *Cler. Aff.* 221.

*Vide Chap. 15.*

C H A P.

## C H A P. XXVIII.

*De Imposition' Crimen Contrafection'  
script', &c. Vide Chap. 25.*

Indenture.

*ff.* **O**f forging an Indenture to trouble the Plaintiff concerning Lands bought.  
*Rast. Ent.* 357, 358.

Indictment.

*ff.* For procuring the Plaintiff to be indicted for Forgery. *Bro. Red.* 22.

Acquittance.

*ff.* For saying the Plaintiff forged an Acquittance. *2 Instr. Cler.* 66. &c.

For what an Action lies.

**N**ote, An Action will lie for saying, Thou hast forged a Deed; or, Thou art a Forger of false Deeds, or false Writings; or to say, He hath forged a Lease, Obligation, Release, Acquittance, Feofment, or other Deed. *Owen's Rep.* 47. *1 Cro. 553, 554, 607. Dyer 285.*

For what not.

But for Words that sound adjectively, as, Forging Knave, or the like, or where the Sense of the Words are uncertain, an Action will hardly be allowed. *Popb. 177. Hob. Pl. 8, 48.*

*See Chap. 16.*

References to Pref.

*ff.* For Words of Forgery, *vide Thomps. 48, 53. Bro. Red. 72. 2 Mod. Intr. 20. 2 Instr. Cler. 66. 1 Bro. 65, 79. Placit. Gen. 25, 32, 35.*

*ff.* Of

*ff.* Of counterfeiting Seals. *Reg. Orig.* 112. Counterfeit  
*&c.* Seals.

*ff.* Of counterfeiting Money. *Thomp.* 54 Counterfeit  
Money.

For the Bars and Pleadings in these se-  
veral Particulars, *vide Town's Tables,*  
and *Cornwall's Tables;* *Tit' Action sur le*  
*Casé, &c.*

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**F I N I S.**

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